Tagore Law Lectures—1920.

PRINCIPLES

OF

CRIMINOLOGY

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FOREWORD

The aim of these lectures is to supply the need for a comprehensive introduction to the study of Criminology, in the light of which modern penal law has to be modified and rearranged. I have derived most of my information from the volumes of the Modern Criminal Science Series and Dr. Healy's grand work on 'The Individual Delinquent.' My greatest debt is due particularly to Lombroso, the great Italian founder of the science, and his daughter.

In this country, I am under deep obligation in special to Rao Bahadur M. Pauparao Naidu Avergal of the Indian Police, Sir E. Cox, Mr. H. L. Adam and Mr. John Adam.

The book requires a good deal of amendments which I reserve for the future. In its present form, it will, I hope, be useful as inviting the attention of the enlightened Indian public to the subjective study of the individual delinquent and the need for scientific penal reform.

K. S.

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PRINCIPLES OF CRIMINOLOGY

LECTURE I—INTRODUCTION

A

'Know thyself' is a house-hold word of Indian Philosophy. While knowledge of the Self behind the veil of Nature is beyond the scope of Science, knowledge of the soul through the world of phenomena is her goal. Human phenomena individual or social are so complex, vast and varied that in order to help overcome the limitations of our understanding they have become the subject-matter of manifold branches of learning. The branch of science that leads us to the knowledge of self through the phenomena of crimes is here the subject of our study. Its importance to society is scarcely less than the importance of society to our well-being and progress, for if crime were to have its own way, where would society be? Ever since the recognition of its anti-social nature, man has been striving to repress it with his might and main; yet his efforts have not been rewarded with commensurate success. The reason is that he limited his view to its externality and hardly turned his eye towards its primal sources. He

was satisfied with violently lopping off the branches but rarely went to cut at the root of the tree of criminality. It is the latter task that modern Criminology seeks to accomplish and it is this that constitutes its greatest value as a social science.

In this respect, this science reflects the spirit of true civilisation, which is often confused with the presentation of a polished fair exterior masking often a foul heart within. Civilisation really consists in taming the brute in man and making it human, and the object of Criminology is to transform the criminal into a truly civilised man. It is thus a matter of cosmopolitan interest. Participation in a scientific movement of this nature stimulates intellectual and moral activity and India may with advantage play her part in this domain of subjective study and help to solve several of the problems which remain unsolved to-day.

As regards its scope, Criminology presses into its service almost all the sciences known to us. Lombroso, the Italian founder of the science, derived his ideas of atavism from Biology and based his theory upon his knowledge of Anatomy, Physiology, Psychiatry, Anthropology and History ; even Zoology and Botany were studied with a view to trace the criminal type down to the lowest grade of creation. A better knowledge of

the same sciences was required to refute his doctrines. Study of the organic causes of crime pre-supposes a knowledge of Pathology and other allied sciences. An examination of the physical factors of criminality brings us face to face with Ethnology, Eugenics, Orography, etc., while the criminal sociologist requires an acquaintance with Politics, Economics and Sociology, etc., and one must have a good grounding in the Psychology of human action before proceeding to investigate the psychic springs of criminal activity.

Criminal Phenomenology includes a study of the criminal art, language, literature, psychology, religion and superstition. The criminal investigator has to call in the aid of experts in almost all physical and natural sciences. Successful measures for the prevention and cure of delinquency necessitate a knowledge not only of mental and moral sciences but also of Religion and Philosophy. A philosopher once said to his disciple : ' If you know all about that cranny in yonder flower-pot you have known God and man.' If the dictum is true, it must apply with far greater force to the study of a species of human acts which are the expression of human personality acted on by society and the universe. In Criminology, the philosopher's ' cranny ' is crime, and his ' flower-pot ' is man, and then what wonder is it if this study illustrates the unity of science ?

Now it is for us to note how a study of this science is of vital importance to the student of criminal law. As a great American lawyer put it, the first stage in a comprehensive study of the Law relates to a knowledge of the legal rules governing human transactions; the second stage is represented by a study of the principles which underlie and bind together those rules of law into a system; and the third and final stage consists in 'the exploration of the realms of science lying immediately beyond the boundaries of the Law with a view to ascertain its origin, its essential nature, its method of development, its function in society and the place it occupies in the general system of human knowledge.'* Viewed from this standpoint, Criminology represents the final stage in the study of the Law of Crimes, which will therefore be incomplete without it and an application of its principles is considered 'the sole means of an intelligent and systematic improvement of the criminal codes of the civilised world.'

B

Now let us pass on to the definition of the subject. Criminology is, as the term indicates, the scientific study of crime, which in order to be complete must be subjective as well as objective. The latter side is treated in Criminal Law and Jurisprudence, and it is the former

* James Coolidge Carter's Law, its Origin, Growth & Function, p. 1.

aspect that is the subject of special study in modern criminal science.

What is crime according to the idea of to-day? By the term 'crime,' everybody understands that it is a punishable act. At once the question arises. 'If omission to do an act be criminal, does the word "act" include such omission?' Primarily Bentham and Austin and recently Dr. Mercier gave their answer in the affirmative. Their opinion is that crime is a voluntary act and since the act of willing is present in both bodily movements and *arrests or suppressions* thereof, the term 'act' need not be confined to movement alone. 'Wilfully to refrain from acting is to act.' But this view is rejected by Dr. D. Aikenhead Stroud as repugnant to common sense on the ground that an omission is an artificial conception and does not indicate an event. Suffice it to say that even in Dr. Mercier's opinion the term cannot be extended to an omission where the element of volition is not associated with it. Where criminal liability is vicarious as under Sections 154 and 155 of the Indian Penal Code, crime is neither an act nor an omission. But artificially it can be brought under the heading of omission. For convenience' sake, an act may be held to include an omission. Crime may therefore be spoken of as an act punishable by law. This is its simplest legal definition. In order to understand its

social and individual significance, the objective and the subjective basis of the concept should be analysed. In spite of the fact that words do not always preserve their original sense, an examination of their root meanings is of some service at times. The word 'crime' is derived in two ways—(1) from a Latin word meaning 'to accuse'; (2) from a Sanskrit word Kri (=to do). Lombroso adopts the latter derivation because it serves him the purpose of showing that crime was part of normal life in primitive society; but in the light of philological principles of depreciation and specialisation of words this derivation even if right is not sufficient to prove his view of ancient social groups.

Combining the modern meanings of both the proposed roots so as in a way to imply its legal import we may say crime is a most validly accusable act. First let us look at the thing from the objective standpoint.

Accusation implies response and unless an act affects somebody it cannot be accusable. Hence crime is an act affecting somebody. If the act affects the doer alone, it will provoke only self-accusation, and cannot then be generalised as accusable. So, crime affects somebody objectively and not the doer alone. Accusation will not be the response to an act unless it affects somebody adversely or is regarded as so affecting. Crime

is therefore an act causing injury or harm to somebody objectively. The next question is, 'who is that somebody that is affected by it?' If an act causes hurt to an animal which is nobody's property, it may be a sin but not a crime; for accusation should proceed from one who is injured directly or indirectly. If an act causes death to a cow in a Hindu street, it may injure the religious feelings of the people and consequently affect them indirectly. Hence crime must affect *human* beings and that, directly or indirectly. The next question that suggests itself to us is, 'If an act injures only an individual and not the society in any manner, is it a crime? Rarely it is that an act affects the first without affecting the second at the same time. But supposing that was the case, accusation would not be effective unless the injured individual had recourse to private revenge. In primitive times when society did not realise being hurt indirectly through an individual member thereof, there was no modern conception of crime. Hence it is an act which must harm or be regarded as harming society directly or indirectly. Then, if an act is anti-social, and the response it evokes is mere moral reprehension of the public, is it a crime? The answer is in the negative, for, this sort of response will not be fully effective, unless it finds expression through the legal machinery. In other words the response must come from the State which represents

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Society, and being penal, it implies physical restraint of some sort or other in the last resort. Even in case of fines the ultimate mode of enforcing payment thereof implies physical control; and the mildest of disciplines as in 'the open door system for the insane' pre-supposes confinement to a colony or other field of work. Again, the State will not call an act in question unless in its opinion it is anti-social. Consequently the State it is that determines whether an act has the status of crime or not. The State may respond to an act in two ways, either at the instance of the injured individual or group or by itself taking a direct interest; again the State's response may be in the form of redress or punishment. An act is criminal only if the State takes the latter course or responds in the latter way; otherwise it is a tort.

Then, in order that the State may effectuate its response to anti-social acts, it is a condition precedent that the authors of such acts whether individuals or groups should owe allegiance to it, save for extradition purposes. If crime is an act or omission punishable by the State, its domain will be enlarged or dwindled according as legislation is inspired by the socialistic or individualistic view of its function. Modern tendency appears to favour the former. Owing to differences of opinion between the State and the Individual respecting the anti-social nature

of an act, Politics, Science and Religion have won martyrs to the cause of their progress. In their cases crime might be said to be the result of a conflict between conscience and law.

We have seen that crime is punishable by the State; should this not be known to the accused? Although everyone knows that serious offences are punishable at law, every one is not conversant with the nature and extent of the penalties for all the offences in the Code. Beccaria laid down that every person should be able to know when he is guilty and when he is innocent; but legal procedure and practice necessitates the rule that 'ignorance of law is no excuse.' Hence from the legal point of view, crime is an act punishable by the State independently of the accused's ignorance of its illegality.

However, crime is mainly a voluntary act. An involuntary movement of an epileptic is never punished as an offence although it has produced injurious consequences to others. But in quasi-crimes such as the sale of adulterated stuffs, for which a vendor is punishable in spite of his ignorance of the adulteration, penalty attaches to acts even independently of the doer's knowledge of facts.

Apart from the hypothesis that the State can deem any act to be a crime, an act is criminal under circumstances when it is

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regarded as anti-social. If the same deed helps to protect society, it is not a crime. For instance, slaying the enemy in war is no murder, because the act is done in defence of society. As society is ultimately meant for the protection of its individual members, the same principle applies to self-defence. Hence an act is not a crime if done in *bona fide* self-defence and within due limits of its necessity. Similarly when an individual does an act in the discharge of a duty delegated by the State, it cannot be called criminal, being in the interests of social security. Instances are superfluous. Other circumstances which render an act non-criminal need no special mention.

Then again, it should be borne in mind that crime to a great extent differs from age to age and from place to place, according to the intellectual advance of diverse social groups. For instance, the Battas of Sumatra in recent times and the Scandinavians of pre-historic days looked upon it the duty of sons to relieve their parents from the pangs of incurable disease or old age by putting an end to their life. The young warriors of many a savage tribe of Africa were allowed to set out on head-hunting expeditions by way of vindicating the valour of their arms. Infanticide was a common practice among several Rajput tribes. Theft outside the community was encouraged by the ancient

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Spartans. As regards sexual morality, similar instances are not wanting. The savages of Tahiti are known to have the custom of the host hospitably lending his wife to the guest for at least a single night. Polyandry was a common feature of primitive society and we hear of the custom, among some of the semi-civilised races, of the husband tolerating adultery with his childless wife for the sake of issue. Ideas of decency, honour and religion also vary from society to society. It is said that the Spartan maidens wrestled naked in the gymnasia. Consummation of the marriage in public seems to be the custom with several tribes of the Sandwich Isles. The rules of a peculiar Hindu sacrifice tolerated a similar ceremony in this country. As Garofalo puts it, 'the murderer's point of honour is not to be considered a thief' * criminals pride nad themselves on the boldness of their exploits. Thus we see that the scope of crime may widen and narrow with the social and ethical ideals of every community.

Considering the indefiniteness of the act called criminal, Garofalo the great Italian jurist undertook the analysis of sentiments which are injured by the criminal act in every society, and came to the conclusion that natural crime is 'an offence against the fundamental sentiments of pity and probity possessed in the average measure

* Garofalo's Criminology, p. 18.

by a social group.'* This is a good but incomplete definition. No doubt the cementing forces in every society are love and a sense of justice. But even these sentiments are as Ferri suggests, 'the hereditary and changeable effects of the social conditions of existence.' † Besides, Garofalo pays little attention to the positive motives of the individual which urge him to action.

Indetermination attaches more to the act than to the motive. If parricide was regarded as a filial duty, it was actuated by the motive of providing relief to incurables. Theft outside a community is quite of the same nature with the raids of war at the present day, and differences in ideas of honour, decency, etc., are almost entirely due to variations in intellectual progress. This is the reason why Professor Ferri asserted: 'It is the personal motive of human acts, not the name or legal definition that is of value in Criminal Anthropology.' ‡ Hence the importance of individual motives in estimating the criminality of acts. In consideration of the subjective elements, the field of delinquency is being gradually narrowed. The development of Psychiatry in the nineteenth century has saved insane criminals; Pathology has helped a good deal to decrease criminal responsibility. With the growth of the theory of Determinism, penal law has

* Ibid, p. 33.

† Ferri's Criminal Sociology, p. 80.

‡ Ferri's Criminal Sociology, p. 75.

come to be considered as the law of tutelage over deficient beings and criminal responsibility based on freewill recedes into the background. If the radical school of penal reform gains ground, punishment may dwindle into mere oral persuasion.

Another point to be noted is the distinction between crime, vice and sin. The same act may be a crime, vice or sin, according to the point of view adopted and the kind of sanction attaching thereto. Prostitution, for instance, is immoral and sinful, but not criminal, but if the State penalises the same it will become criminal as well. A crime is viewed from the standpoint of its social gravity; a vice is looked at from its effect on the subject. Whether an act is a sin depends on the attitude of religion towards it; and whether an act is a vice depends on the ethical sense of a society. Sin and vice may be confined to thought alone in certain cases. Crime concerns thought only from a social point of view. Sin concerns society so far as religion is related thereto. Vice concerns society in so far as it may pave the way for degeneration and criminality.

From the above discussion we may gather that crime is a legal concept of varying significance. If a scientific definition of it should comprise all the factors of criminality, such a synthesis should come at the end and not at the

outset of our studies. It is rather the goal than the starting-point of Criminal Science. However, as a workable definition for our purposes we may adopt Berenini's definition that crimes are 'punishable acts which determined by individual and anti-social motives, disturb the existing social order and in most cases shock the average morality of a given people at a given time.' *

The next point that invites our attention is the artificial distinction of normal and abnormal introduced into Criminology. The term 'normal' is used in various senses: (1) usual, (2) general, (3) natural, etc., the other term indicating the contrary. At the outset crime looks abnormal at the thought that while the majority are law-abiding, only a minority violate social order. Crime is regarded as abnormal because it does not form part of the acts of regular life, but interrupts its course. But from another point of view Durkheim in his 'Rules for sociological classification' regards crime to be indissolubly linked to society as 'a factor of public safety and an integral part of any healthy social body.'† It indicates the direction of reform in society; it keeps society vigilant and active. The paradoxical maxim 'If you want peace, prepare for war,' applies equally well to criminality.

* Ferri, p. 81.

† De Quiros's Modern Theories of Criminality, p. 36.

From a moral point of view, crime is regarded as abnormal as not being in harmony with human nature and biological ethicists like Despine and Garofalo view it as such on account of its being anomalous through loss of acquired good qualities. This view countenances the sociological opinion that many moral conceptions represent acquired qualities and that man is by nature dishonest. If the latter be the truth, only the form of crime must be regarded as abnormal. In the eye of the metaphysician, crime is normal as an effect of the finitude of human nature.

Biologically, Albrecht regards crime as normal because the criminal as every other organism acts through selfishness; on the other hand the Italian school holds that crime is abnormal, being atavistic or pathological in its nature.

In this connection, it is interesting to note Dr. Battaglia's view of crime: 'From the human point of view, a crime represents the satisfaction of a need of the criminal. In fact a need not satisfied constitutes a pain, and pain, whatever its nature may be, first excites and then depresses and exhausts the functional power of the organism. The organism under the influence of pain loses a quantity of phosphates proportional to the intensity of the pain; the psychological equilibrium is broken, and some functions important for the internal economy are neutralised. The organism because of the law of conservation

is called upon to relieve the pain. Often it can do this without injury to others; at other times it comes into collision with social interests and in such a case falls into crime.' *

C

I shall essay here a brief historical introduction to the subject. In modern times, the subjective study of crime began with the investigations of medical men. As early as 1656, a Scotch physician Thomas Abercromby gave the name of 'moral insanity' to the psychic condition of the remorseless habitual criminal who presented no intellectual disorder. But nobody appears to have regarded it then as a ground of exemption from liability or for reduction of punishment. The growth of Psychiatry in the last century proved fatal to the idea that 'the insane is sane for punishment.' Pinel's work in 1801 called 'A Medical and Philosophical Treatise on Mental Alienation' marks the beginning of the conflicts between Psychiatry and the Penal Code. Pinel used the phrase 'mania of character' to indicate moral insanity. In 1835 Pritchard employed the expression 'moral insanity' to denote a psychic overthrow benumbing the moral sense. In England Clapham and Clarke's 'Outlines of the Insane and the Criminal' appeared in 1846. Lombroso's first efforts were directed to the study of Psychiatry on experimental methods.

* Bonger's Economic Conditions and Criminality, p. 214.

Besides Psychiatry, Phrenology paved the way for the study of the brain of criminals. In 1840 Carus a physiologist drew attention to anomalies in the cranial formation of delinquents. His description of the anomalies will find a place in the next lecture. In 1844, Lauvergne described the type of the cold-blooded assassin, after a study of the skulls of criminals at Toulon and clearly anticipated Lombroso in his theory of the type.

On the biological side, Lucas, in 1847 propounded the theory of hereditary transmission of crime in his 'Treatise on Natural Heredity.' In 1857, Morel enunciated the theory of degeneration of the primitive ideal type which contained all the elements necessary for its preservation.

On the psychological side Despine speaks of moral anomaly in his 'Natural Psychology' which saw the light in 1869, and anticipates Garofalo in some respects. Thompson's 'Psychology of Criminals' appeared in 1870. In 1873, Maudsley in his work on Mental Responsibility proposed the borderland theory of a middle zone between mental disease and moral perversity. He recognised the instinctive criminal as morally insane.

On the social side the question of criminality has been studied by politicians and philosophers since the days of Plato. In modern times there

have been several writers on the subject from Sir Thomas More to Robert Owen and Engels. Statisticians pursued the matter more closely but more mechanically. Guerry, G. Mayr and Quêtelêt are some noteworthy names. Though their standpoint was mainly economical, they also considered the influence of physical causes like climate, race, etc. In 1869, Quêtelêt wrote his Social Physics, and expressed his view thus: 'Society prepares for crime and the criminal executes it.' With reference to climate, his thermic law of delinquency is very interesting.

All these studies foreshadowed aud facilitated the birth of modern Criminology. Since the time of Beccaria (1738-1794) whose work on crimes and punishments inaugurated the age of penal reform in Europe, Italy has been taking the lead in the development of criminal law. About 1876, Cesare Lombroso who was a Darwinist physician at Pavia was struck by the difference in behaviour of a honest soldier from his vicious compeer. From his examination of the skull of a brigand called Vilella, he conceived the idea of the type of the born criminal. His later experiments confirmed him in the idea. He began to consider the place of the criminal in relation to Anthropology, Jurisprudence and Psychiatry in a small pamphlet which gradually swelled into three volumes. His theory of the type and of its atavistic origin laid the foundations of modern

criminal science. His series of works like 'The Female Offender,' 'Political Crimes,' 'Legal Psychiatric Expertism; Methods of Procedure, Penal Casuistry,' 'Crime, its Causes and Remedies,' etc., comprise in a way an outline of the various problems of Criminology. About 1879, Bordier in France sketched the hypothesis of criminal atavism from his study of the skulls of murderers at Caen. In 1880, 'The Archive of Psychiatry, Penal Science and Criminal Anthropology' was established in Italy.

In 1881 in his studies on criminality in France from 1826 to 1878, Professor Ferri set forth the theory of factors, according to which crime is the result of anthropological or individual, cosmic or physical and social factors, the dominant influence of this or that factor determining the bio-sociological variety of the criminal. His work called the 'New Horizons of Criminal Law and Penal Procedure' which appeared in 1884 supplied the basis for the theory of Determinism.

Raffaelle Garofalo in his 'Criminology' propounded his theory of natural and artificial crimes. He looked upon criminality as the result of moral anomaly due to ethical degeneration through retrogressive selection. With the anthropologist Lombroso, and the sociologist Ferri, Garofalo forms the trinity of the Italian

school. He was a juris-consult; his theory savours of the dualism of Roman Law, represented by *Jus gentium and Jus civilis.*

Other schools sprang up on the criticism of the Italian school. The first International Congress of Criminology met at Rome in 1885, where Laccasagne emphasised the importance of the social causes of criminality. He said: 'Societies have the criminals they deserve.' In the next Congress held at Paris in 1889 the French school of environment under the guidance of Professor Monouvrier delivered a strong attack upon the Italian school. In Italy itself the socialist opposition to Lombroso began about 1883. Turati's pamphlet on 'Crime and the Social Question' appeared the same year in answer to Ferri's 'Education, Environment and Criminality.' Thereafter Ferri wrote his 'Socialism and Criminality' with a polemic intention. In 1889 Dr. Colojanni, the champion of psychic atavism wrote his 'Criminal Sociology,' in which he recognised the importance of the economic factor in its static and dynamic aspects.

In the early nineties the subject won attention in Germany. Hans Kurella was a follower of Lombroso but adapted his work to the German spirit. About the same time Dr. Baer's 'The Criminal' was an exhaustive attack on Lombroso. Dr. Baer inclined to the French school. Professor Näcke and Professor Her Von Liszt were

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bio-sociologists; the former is a strong critic of Lombroso, and his criticism of 'moral insanity' is very sound; the latter distinguished himself by his clear exposition of the view of his school that crime is the product of individual and social causes. In 1895 Sommer in his 'Criminal Psychology' deduced the net result of the atavistic theory, and pointed to the importance of endogenous causes of crime. In England Dr. Ellis was a bio-sociologist favouring physical atavism. His book, 'The Criminal,' is almost the only English work which reproduces Italian views in clear terms. In America Mc Donald's 'Abnormal Man' appeared in 1896; W. D. Morrison's work on 'Crime and its Causes,' and Corroll D. Wright's 'The Relation of Economic conditions to the causes of crime' show that the authors are bio-sociologists. Horseley's book 'How criminals are made' is of some practical value.

Other special theories need no mention here.

In America, several works like those of Professor Parmelee, have appeared in recent times. In 1909 was established the National Institute of Criminal Law and Criminology at Chicago, which has rendered into English several of the important continental works on criminal science.

Here we may end the history of modern Criminology. The history of Penology and

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Criminal Investigation will be summarised in the lectures relating thereto.

D.

In the study of crime, the Indian method of looking at a thing has been adopted. Everything is born, runs its course, decays and dies. Accordingly the five lectures succeeding the first in this treatise treat of the birth and growth of crime, *i.e.* of the ætiology of crime and form one book; the seventh and eighth lectures are devoted to the appearance, course and detection of crime (*viz.*, phenomenology and criminal investigation) and constitute the second book; while the third book consists of lectures on the prevention and extinction of crime (*i. e.*, Prophylaxis and Therapeutics of crime.) The divisions may not be exclusive but in the nature of things slide into one another.

In analysing the causes of crime the Tamil grammarian's mode of analysing an act has suggested itself to me. In other words, the causes have been divided on the following plan;

(1) Causes in the nature of agent comprise psychological and organic causes; for, crime proceeds from man; in respect of its agency, either the psychological part of his alone or his whole organism may be regarded.

(2) Causes which are auxiliary include organic and physical factors of criminality. Here the organic causes mentioned in (1) have been

excluded as far as may be; causes which are treated here do not originate any criminal tendency, but serve to transmit, aggravate or develop it.

(3) Occasional causes are those which present opportunities or external facilities for the commission of crimes. They may be physical or social.

(4) Causes social and economical are in the nature of those that prepare the ground for criminality.

The remark of overlapping applies to this division of causes as well; causes in (1) are treated in the second lecture; causes in (2) and in (3) are put together in the third lecture. Social causes and economic conditions cover each a single lecture. The sixth lecture is devoted to an examination of the causes of a few specific crimes and classification of crimes and criminals with criticisms thereon. For the sake of convenient adjustment prostitution is dealt with in the lecture on social causes, and alcoholism in the next lecture, and by social causes are meant those other than economic conditions.

The seventh lecture on Phenomenology falls into two parts. The first part describes a few crimes novel in the West, and a few others peculiar to India with special reference to the criminal tribes of this country and the second part is a brief account of the physical, functional and

psychic peculiarities of the born criminal and the criminaloid as detailed in Gina Ferrero's 'The Criminal man.' The history and requirements of criminal investigation, the application to judicial enquiry of the principles of criminal psychology, and the examination of the criminal on the basis of Lombroso's researches form the subject matter of the eighth lecture.

The third book opens with a lecture on preventive measures taken by the State, on the Police systems of India and Europe, and on the influence of religion and education. The lecture closes with a description of private institutions in the West and comparison of the same with charitable institutions in this country. Exposition and criticism of various views of the doctrine of Responsibility are dealt at some length in the tenth lecture. The next lecture deals with the objects, methods and principles of punishment and closes with a discussion of legal and judicial individualisation. Administrative Individualisation is the subject of the twelfth lecture in which modern penal systems Indian and Western receive full treatment. A few examples of private initiative in the matter precede the conclusion of this part. The last lecture represents an attempt at a comparative view of the penal systems of India, Rome and England.

BOOK I

LECTURE II

PSYCHOLOGICAL AND ORGANIC CAUSES OF CRIME.

A

In the last lecture we examined the legal definition of crime and perceived it to be a human act detrimental to society which the State seeks to repress by means of legislative and judicial weapons. Although there arises at times a conflict of opinion among statesmen and scholars in respect of certain so-called crimes as to whether they are so injurious to society as to call for penalisation, it is agreed on all hands that what makes an act a crime is the gravity of its anti-social character.

Without society there could be no crime. None of the acts or omissions of a Robinson Crusoe is a crime. A Robinson Crusoe is the lord of all he surveys and if he kills game on his lonely isle he cannot be guilty of trespassing on any person's property. He can give full play to his egoistic instincts and exercise his violence against any animal. Fancy he has a companion whom he beats or slays in a moment of frenzy. It is clear that even then his cruel act cannot be deemed criminal as there is not a single

nucleus of human society in all his isle. Even if there be a hundred individuals we cannot speak of social life in case they were all in a state of nature where every man might be at war with his neighbour. Now suppose our Crusoe is not single but has got a wife and children. Then springs into life the 'earliest unit of human society' and looms into view the limitation ever so slight of the full freedom of the hero.

The beginnings of family life are traced by eminent writers like Westermark in the pre-human species of apes and gorillas. Darwin says: 'If we look back far enough into the stream of time and judging from the social habits of man as he now exists, the most probable view is that he originally lived in small communities each with a single wife or, if powerful, with several, whom he zealously defended against all other men. Or he may not have been a social animal and have lived with several wives like the gorilla; for, all the natives agree that only the adult male is seen in a band; when the young male grows up, a contest takes place for mastery and the strongest by killing and driving out the others establishes himself as the head of the community.'[1] Conceiving the primitive human family as characterised by a similar state of things, Professor Sigmund Freud in his psychoanalytic interpretation of Totemism

1 Darwin's Origin of Man, Vol. II, Chap. 20, p. 603-4.

propounds the theory that the totem animal should be regarded as a substitute for the father of the original family and that primitive associations of men in totemistic groups were developed out of the primal horde brought into being by the sacrifice of the father who having jealously driven his growing sons into forced celibacy or polyandrous dependence on any captive woman, fell a victim one day to the concentrated rage of the expelled brothers who slew and ate him up. These brothers he says were dominated by an 'ambivalent' emotional attitude towards the father, *i. e.*, "they hated the father who stood powerfully in the way of their sexual demands and their desire for power, but they also loved and admired him as their envied and feared model. Consequently after they had satisfied their hate by his removal, the suppressed tender impulses asserted themselves."[1]

Psychoanalysis shows that the mental mechanism of savages has much in common with that of children smitten with animal phobia and is not advanced beyond the stage of the objective view of things. The animal phobia of such children has been observed to be the fear of the father displaced on the animal. A child eight years old, suffering from dog phobia, addressed these words to a dog: 'Dog, I will be good, I will no more play the violin.'[2] These words

1 Freud's Totem and Taboo, p. 237.
2 Ibid, p. 213.

referred to the father who scolded his child for his habits of self-abuse. With a like stage of mental adjustment the repentant brothers undid their deed by forbidding the killing of the father substitute the totem animal and renouncing the fruits of their deeds by denying themselves the liberated women. The facts of the totem feast confirm this view. The totem animal is killed only at a solemn sacrifice at which all the members of the horde assemble and partake of its meat but it should not at other times be slain by any single member of the tribe. The peculiar feature of it is that after the sacrifice of the animal lamentation is compulsive. The totem feast represents in Freud's view "the repetition and commemoration of the sacrifice of the father the first memorable criminal act with which so many things began, *viz.*, social organisation, moral restriction and religion." [1]

This parricidal act of the brothers is in our view the first equivalent of the crime of murder. The term 'crime' cannot exactly apply to it because there was as yet hardly any social life on an extended scale; there was just the commencement of the state of things precedent to it. Nothing was left for the brothers if they wanted to live together but to 'erect the incest prohibition.' 'That sexual need does not unite but separates' gained practical expression in it. Thus were

1 Ibid, p. 236.

created the two fundamental taboos of totemism against the slaying and eating of the totem animal and against sexual union between members of the same totem. Whoever disobeyed these taboos became guilty of the only two crimes which troubled primitive society and the punishment for disobedience was nothing short of death. It is a view of the exponents of this theory that the matriarchate followed close upon the primal horde. The germs of the anti-social act and of its reaction are discernible in this primal family. The sons and the father together with the women might be regarded in the light of a society in miniature; the father acted in his self-interest to the disadvantage of the sons and the voice of the most powerful group in that little society reacted against him, which resulted in his murder. In the matriarchal society the taboos became the nucleus of criminal law or custom.

In the later patriarchal family of prehistoric times, the father was the supreme ruler and his will was the law. He repressed the acts of each member of the family against any other thereof. Were the mother and children regarded as the father's property, there would be practically no society, and the patriarch might do anything he pleased with them. But if the members of the family were allowed a voice in regulating its life then there would appear the rudiments of social existence. If there were

disunion or discord among them then, 'a house divided against itself could not stand.' It would fall to pieces or branch into as many families as there were married men. Let us go a step further and suppose that several families were at strife with one another, none dominating the rest. Then these family feuds would represent internecine warfare and could not be regarded as crimes in the modern sense of the term, as there was as yet no bond integrating all the families into a social unit. But if they were knit together into a tribe, the feuds would wear the garb of crime. History tells us that primitive families developed as a rule into clans which most closely answered to social organisms. In regard to its members the clan exercised a primitive justice and it was only when several clans were united for purposes of war into a tribe that crime evoked internal social reaction called punishment. At this stage the struggle between one clan and another took the shape of crime and what constituted a ransom for the rescue of a member of any clan came to represent the wergild within the tribal society. Even then the tribal assembly recognised as anti-social only a very few acts like treason or failure of military duty, etc., which in their view threatened social order. Thus we see that the idea of crime was not evolved in due form till the beginnings of political union at least in its tribal form. It was only after the development of the State that

crime grew in importance and extent and came to be distinguished from civil wrongs; in other words it was only after the institution of punishment superseded the scale of compensation that Crime in its modern sense gained an individuality as distinct from Tort or Civil wrong.

Crime never comes into being so long as the egoistic tendency of man does not issue in an act or omission. An act, in the eye of criminal law, is nothing but a voluntary movement or change or cessation of it. The study of the nature of an act brings us to the consideration of the physical side of man and the universe. Man and Society have no existence independent of the universe. Even if a crime is in the form of an omission what is the necessity to refer to it if it does not cause some effect in the external world ? The very physical frame of man is a part of the universe he lives in. It is the universe that supplies tools and avenues for the human spirit to vent its energy for or against anybody. For instance, take the simple offence of defamation; the defamatory words uttered by one man cannot be conveyed to another but for the existence of the atmosphere. As Dr. Mercier says, 'If fishing were a crime, it is a crime of which the Arab in the Sahara desert could not be guilty.' Further, it is the physical needs of man that mainly impel him to crime and it is at any rate through the physical side of the human

organism that crime is reacted against and repressed in any society. Lastly it is manifestation in the physical world that distinguishes crime from a sin which in the eye of the Almighty may be confined entirely to the psychic realm. Hence the indispensableness of the physical universe for the genesis of the criminal act.

Although man, society and the universe are indispensable for the existence of crime, little is gained by the knowledge of such a fact for the ends of criminal science. What is of primary importance for the purposes of the science is a psychological study of the criminal; for crime properly speaking belongs to the category of acts or omissions which are willed by man, *i. e.*, which are the expression of the doer's whole self in conscious pursuit of an end. An end or purpose is the satisfaction of a need. The first need of every organism is self-preservation, which is only possible by adaptation of the organism to environment, or by rendering the former immune to the influence of the latter. On the psychic side the adaptation is motived by the conception of his 'self' which an individual entertains. What one man feels as part of his self may be the 'not self' of another. Even in the case of a single man what he regards as part of his self at one moment of his life passes into the 'not self' of his at another. On the organic side such adaptation is achieved under the guidance of the

intellect by the play of instincts or tendencies which 'set the ends that sustain the course of all human activity.' The human mind receives impressions from the external world through the sense organs and also from internal bodily conditions through afferent nerves. If these impressions excite only a nervous reaction due to a sequence of merely physical processes, the resulting behaviour is said to be reflex and it sheds little light on the psychic element in adaptation. If the impressions be such as to penetrate the region of feeling, an emotion ever so faint is excited and conative reaction may be directly initiated. The resulting behaviour is then styled instinctive. All writers on psychology are of one view that it is not knowledge but feeling that immediately determines action. Spinoza said 'Appetite is the very essence of man.' Prof. Hoffding remarks: 'Mere reason has no power in actual mental life where the struggle is always between feelings. The frequent talk of the conflict of reason with the passions is consequently psychologically incorrect. No such conflict can take place directly. A thought can suppress a feeling only by exciting another feeling which is in a position to set aside the first.'[1]

The three aspects of the mind relative to knowing, feeling and doing are spoken of in Indian Philosophy as the Itcha, Gnana and Kria

1 Hoffding's Outlines of Psychology, p. 287.

powers of the Psyche. Itcha is given the first place because it is the central key-stone unifying the two processes of Gnana and Kria on either side of it. These mental aspects have their corresponding parts in the nervous system, *viz.*, the afferent, central and efferent parts of it.

The great Tamil Grammarian Saint Tholkappiyar in his treatment of the Expression of Emotions speaks of four things: (1) the world of taste, (2) its impression on the mind, (3) the relation of the impression to the centre of latent emotions, and (4) the resultant physical manifestation of emotional tendencies. While the channels of impression and expression are subject to endless adjustments with reference to the external world, the central region of inner forces which bridge the gulf between the psychic and the physical remains more or less constant throughout life. It is this region which is the source of all the tendencies calculated to adapt the organism to environment. Every natural tendency of a living being to act in a particular manner is called an instinct, which is, in the words of Scopenhauer, 'a differentiation of the fundamental Will-to-live conditioned by the respective conative disposition.' Taking its source in the central region, every instinct has no doubt its characteristic emotion. But only a few of them are distinguished by clear-cut ones well-known by their distinct names.

Let us consider here the instincts whose activity is essential for the maintenance and progress of life. The instinct to seek food is the most fundamental of all, but there is no special name for its characteristic emotion, perhaps owing to the fact that it is entirely born of a physical need. To flee from danger arises from fear which is a deep-rooted emotion whose intensity sometimes proves fatal. This emotion serves as a potent agent of control in social life. The sex instinct is characterised by lust which is a most tyrannical mental force from which the highest of cultured men may suffer. It is at the root of family life and serves to perpetuate the race in unison with the parental instinct which impels persons to care for and protect their children. The characteristic emotion of the protective impulse is styled 'love' by social psychologists. In this is the seed of all humanitarian principles. The instinct to grasp things which one has a liking for is allied to the protective impulse. The gregarious tendency which drives one to seek the company of creatures of the same species as oneself is only a variation of the instinct of preservation. The instinct of aversion has its emotion of disgust and this is a little different from the tendency to combat and remove obstacles, which is often accompanied by the emotion of anger. These and similar tendencies operate in the relation of the external world to self either

as forces of attraction or avoidance.[1] The instincts of elation and submission are forces concerned in the relation of self to the world at large. The great Tiruvalluvar, the 'bard of universal man' ranged these tendencies under three general heads of Ava (grasping or attracting) Vehuli (repulsion) and Mayakam (ignorant self-feeling). The emotional tendencies which draw men towards an object or an idea of it may be styled centripetal; those which turn them in a contrary direction may be called centrifugal and tendencies about self, personal. The object may be concrete or abstract. In the love of a particular child or children in general we have a concrete instance of a sentimental nucleus. Love of justice, uprightness, etc., is an instance where the object is an abstract idea.

These forces are at the base of the activity, mental and physical, of all living beings, and exist in varying degrees of strength in different beings or manifest themselves according to differences in biological or social evolution. While these tendencies represent the effort to adjust the organism to the environment, there is a general law of mental interaction which has its root in the inclination of the mind to assimilate itself to what is agreeably presented to it. This

1 Saint Tholkappiyar mentions, as deserving of appeal in Literature, the emotions which incline us to laugh, to weep, to wonder, to fear, to submit, to exalt, to combat and to love.

is reflected in the Vedic saying of old 'What it thinketh, it becometh.' This is illustrated best in hypnotic suggestion, where the subject under a kind of sleep automatically falls in with the views of the agent. If the agent says 'Is the mango bitter'? the answer of the subject is in the affirmative. If he says the contrary, then too, the answer varies accordingly. This shows that when the intellect is kept at abeyance, the soul is inclined to take in whatever is presented to it in a certain manner. Suggestibility, sympathetic feeling and imitation appear to be the mental processes, based on this general law and relative to the afferent, central and efferent parts of the organism. If the soul has a dislike to anything, then there arises a move in the contrary direction. That is very clear in cases of contra-suggestibility. There is a story in the Mahabharata, of a woman who was the type of this psychic defect, and whose husband always gained his point with her by asking her not to do what he wished to be done. If he desired, for instance, to entertain a guest, he would say to her 'Don't prepare sumptuous meals; prepare unpalatable food, and that, only for the inmates of the house and not for even a single guest in addition.' At once she would apply herself hard and prepare a rich feast for the guest as well as the members of the family. This contradicting tendency breeds misunderstanding and prejudice.

The law of habit is itself based on a general tendency of the human mind, and represents its inclination to move in the line of the least resistance. Temperament is the result of the influence of the body over the instinctive disposition. Pleasure and pain result respectively from the fulfilment and failure of one's instinctive needs and they are not independent of the instinctive tendency. All intellectual processes only supply the means to attain one's ends, to repel what is not wanted, and to effectuate self-expression. It is the intellect that serves to specialise the channels of impression and expression in the light of experience. The development of experience pre-supposes the evolution of the perceptual, retentive, and judging powers of the individual. Instinctive conduct is little modified only in insect life. In the higher strata of the animal kingdom, experience is acquired ever so little, and it modifies the course of natural activity. For instance, while the bullocks drawing carts in country parts take fright at the sight or sound of a motor-car, the animals in the city move quite unperturbed by the whir of tramcars and omnibuses. Similarly, some shrewd children are not afraid of the oral threats of their parents on learning from their mere repetition that blows will not follow on them.

What distinguishes human conduct from animal behaviour is that it is shaped and

influenced most by complex instincts and sentiments to the formation of which the human intellect alone yields the greatest scope. Every instinct is called into play by impressions received from external objects or from internal bodily conditions. With the development of memory, ideas of these excitants rise often to consciousness, appeal to emotional tendencies and generate instinctive conduct. The human Imagination acts as a source of stimuli to the instincts, which are called into play not only by an external object but by the shadow of any idea associated therewith. In advanced beings like men, several instincts happen to be simultaneously excited by complex ideas of objects, and the emotions roused in consequence similarly combine into complex emotions or become organised into sentiments. Love is a simple emotion characterising the parental instinct, but gratitude is a compound of love and humility, while in pity, love is combined with a feeling of mental pain caused by the sight of another's trouble.

A sentiment is, according to Mr. A.F. Shand, a system of emotional tendencies clustering round an object, or its idea. The growth of a sentiment arises as a result of the law of habit operating on one's emotional nature. If a father scolds a child a number of times, the child acquires a tendency to experience fear even at the mere sight of the father.

Now this state of mind represents a rudimentary sentiment of fear. If the father persists in his severe treatment as the child grows it may entertain a feeling of disgust for him, and with the growth of self-consciousness, anger also may have a place within the sentiment of fear. Thus there may be established a tendency to hate the father. This is called the sentiment of hate. When a person has an enduring tendency to experience a feeling of love at the sight of a friend, the friend becomes the object of the sentiment of love. The lover experiences pity when the object of love is in trouble ; anxiety when it is in danger ; joy when it thrives well and anger when it is attacked. These several emotions are excited within the sentiment of love. A sentiment in this sense expresses a state of mind rather than any actual emotion. It must be noted that the term ' love ' is sometimes used to denote the tender emotion and somtimes the sentiment of which it is the nucleus. Sentiments are best formed only when the object in view is retained permanently in memory and is capable of rising into consciousness on recollection. Hence the view that only the highly evolved intellect of the normal human being enables him to rise above the level of a life of impulses. Even among men, there are infinite gradations of psychic development from the congenital idiot to the most profound of philosophers.

The army of crime is recruited largely from men who have not risen much above a life of impulses. Such men have no character duly formed. The pain and pleasure they experience in the course of their activities serve to modify their actions and shape their habits. Every end of theirs may be traced to some one or other of the fundamental instincts inherent in their nature. Take for instance the desire of a thief to steal a watch. Why should he wish to have a watch? It may be either to use it for noting time or for selling it and procuring money. If the first be his desire, what is his object in noting time? It must be to adjust himself to his purposes. Suppose one of his purposes is to rise early and escape detection. Why should he desire to escape detection? Because he wants to save his life or gain his liberty. Why should he desire to save his life? It is because his life is part and parcel of his own self, the preservation of which is a primal need. Taking the latter alternative, if he sells it and obtains money what is the money for? It is only to satisfy his wants. If the need be fundamental like the craving for food, it is purely an instinctive one. If it be a luxury then it is only a development of the primary craving. The indispensable desire to keep body and soul together ramifies in practical life into countless desires for all the things which serve to feed and clothe the body. As soon as hunger and cold are warded off, the instinct to seek sustenance is

reinforced by others like self-elation and emotions kindred to it, and evolves step by step all the manifold comforts, decencies and luxuries of life. Suppose in the case of our thief, the stealing is pathological, then, it is regarded as an end in itself. Even then what is back of the act is the impulse of acquisition rendered morbid by perversion of its cognitive aspect. Men like the thief have only an idea of their bodily self and so long as social consciousness is dead in them their conduct may at any time prove anti-social.

With the development of the self-regarding sentiment, the impulsive life of man is superseded by the life of moral responsibility. Dr. McDougall has dealt at length with this subject in his book on 'Social Psychology.' Space permits here only a brief reference to it. The normal child on reaching a certain level of intellect first learns to distinguish the objects of the external world as persistent realities. At this stage it fails to make a distinction between persons and other things, animate and inanimate. Later on as it becomes more interested in the former than in the latter it begins to differentiate between them. In the course of its experience introspection is developed and the child understands the feelings and emotions that prompt other persons. Subsequently it acquires an interest in comprehending the attitude of others towards himself. Thus the idea of self in the child's mind in a society

involves the idea of a system of relations between it and other members thereof. 'It constantly sees itself in the reflected light of others' ideas and feelings about it. This engenders the feeling of social equality or similarity and initiates respect for social checks to individual conduct in the shape of ethical and legal rules of action. The self-regarding sentiment grows out of the union of positive and negative self-feeling in the relation of self to society. At first the idea of a superior power like the parent appeals to a boy's emotion of self-negation. As he gradually understands his position as a member of society the collective voice of the community figures as the superior power that appeals to his self-regarding sentiment. Publicity appeals to positive self-feeling. Rewards and punishments are gradually replaced by praise and blame with which they are very early associated. At this stage emerges the state of social life in which conduct is governed by self-respect. The important factor in the development of this is the cultivation of active sympathy which finds no satisfaction in conduct that is displeasing to those about him. This is different from passive sympathy, which simply seeks to share emotions and feelings with others. Active sympathy springs from a combination of passive sympathy, the gregarious instinct and the appreciation of the attitude of others.

What is more essential is the habit of self-control. Unless a strong sentiment for self-control grows up and strikes root, the capricious and unrestrained desire that makes one prone to wrongful activity may prove too strong for the human will. In the life of impulses the ideal motive which should restrain the individual from erratic courses is very weak and remains unsupported by any other psychic force. Suppose an individual is the victim of a conflict of impulses, the desire to steal and the impulse of fear excited by the legal sanction against theft. Now the stronger of the two is the former because it seeks to satisfy a fundamental need of the self. Further, an impression that the punishment may be averted by some clandestine ruse or device will reinforce the evil intent. In such a case the sanction of public opinion may have little force in the absence of self-respect as a factor of impulsive life, but in him in whom self-respect has won a place, the moral effort ends in the success of the weaker ideal owing to the co-operation of an impulse excited within the system of the self-regarding sentiment. This co-operation or reinforcement is really the function of the psychological principle called volition. The meaning or import of this term has been subject to keen controversy among lawyers, theologians and psychologists. It is as Professor McDougall puts it, 'nothing else than the sum of motive forces which adding themselves to the weaker ideal

motive in the case of moral effort enables it to win the mastery over some stronger, coarser desire of our primitive animal nature and to banish from consciousness the idea of the end of this desire.'[1] 'Between on the one hand the simple desire conscious of its end and on the other the moral effort that gives the victory to the ideal motive which is volition in the fuller sense of the term, there is a large range of complex conations in which the self-regarding conations and emotions play parts of all degrees of inportance and refinement.'[2]

In the development of mental life, man's conduct passes through several stages of instinctive behaviour, which are superseded by the stage in which his impulses are influenced by rewards and punishments prescribed by the State or society. In the next stage the regulating motive of conduct is social praise and blame. From this stage a higher step is reached when an individual fashions his conduct in accordance with the approval of a superior personality for whom he has a high admiration or reverence. The highest level is reached when conduct is based upon principles which he sets for himself. If the principle is altruistic, it implies self-sacrifice. If adherence to any altruistic principle is very strong it may prove anti-social when conduct based upon it comes into conflict with

1 McDougall's Social Psychology, p. 248. 2 Ibid, p. 249.

public opinion or social law. Hence such conduct will be looked upon as 'criminal' in the eye of the law.

So long as man is at liberty to satisfy his instinctive needs in any way he likes, there is no crime. It is only when the means of satisfying a need of his comes into conflict with the satisfaction of the wants of others in society that it proves anti-social. When an impulse persists unsatisfied and its end is steadily kept in view, it becomes a desire. 'Desire,' says McDougall, 'is the general name for that peculiar experience which arises in every mind capable of holding before itself the idea of an end whenever any strong impulse or conative tendency cannot immediately attain satisfaction.'[1] When the satisfaction of an individual's need is interrupted by social restraint, the craving for the end becomes a desire. Hence desire may be said to be the psychological starting-point of crime. It is a feature incidental to the evolution of the centripetal and centrifugal tendencies of man. When a centripetal impulse is interrupted, it is likely to arouse a centrifugal one against the source of interruption.

Every tendency is initiated and accompanied by its characteristic emotion. With reference to crime it is worthwhile to note the emotions that give rise to anti-social tendencies. The primary

1 McDougall's Social Psychology, p. 429.

centrifugal emotions are fear, anger, disgust and self-negation. A few important complex emotions of this category are worth noting. Scorn is a compound of anger and disgust. When these are combined with positive self-feeling the complex emotion of contempt comes into being. When fear and disgust are mingled the emotion that arises is called loathing. Envy is a compound of negative self-feeling and anger. When anger, fear and disgust are aroused by an object it becomes subject to hate. Jealousy is a complex emotion which arises when three persons are concerned in a relation. When an object is loved by two persons, jealousy is felt by one against the other if his tender feeling receives a check, anger be excited and positive self-feeling wounded by the object of love being disposed in favour of the other. The emotion of revenge is a fusion of anger and wounded self-feeling.

The typical centripetal sentiment is love. If the object of love be self or anything else than society, then any social check which is opposed to it may become the object of hate. The self-regarding sentiment may reinforce either love or hate. The strength of the reinforcement depends upon the conception of the self entertained by the individual. If the self is expanded so as to put itself in place of society or any considerable part of it then it is said to be ambitious. When the desire to acquire anything for the sake of

self is so powerful as to transcend any social check that is placed upon it, the resulting emotion may be called greed; if the desire to meet the sexual need is potent enough to throw off the social restraint, it is called lust. The needless persistence of the centrifugal emotions is in many cases a source of much criminality. Suppose A goes to eat his dinner and he is obstructed by B for a time. Subsequently A overcomes the obstruction and takes his food. Now if the sense of B's harm persists in A's mind, revengeful feelings are harboured against B, and may provoke antagonistic conduct, when opportunity offers itself. Thus, lust, greed, and the like on the positive side, and the persistence of centrifugal emotions on the negative are the mainsprings of anti-social conduct.

So long as these primal elements abide in the psychic frame and do not seek an outlet through the motor impulses of the physical organism or affect any other current of mental activity we can talk of no criminality. They must receive a pressure according to the degree of their strength and be raised to the surface before they issue in criminal action. Although the emotions and instincts above-mentioned are the common heritage of all mankind, there are vast differences in the psychic bent of individuals. A typically uprightman may prefer to starve and die rather than steal a loaf for his meal. Ferrero

says that even when super-consciousness is set at abeyance in hypnotism, it has been found futile to induce a good man to do a wrongful act. Of such good people, Criminology has to say nothing but to hold them as ideals for others. In the case of a normal man, apart from the intensity of any crimogenous emotion or instinct, there are certain conditions which press the same into criminal activity.

His intellectual condition is one of the most powerful of such factors. It is the intellect that opens countless channels along which desire rushes towards its end. The choice of one or other of them depends on the composition of the individual self, *i.e.*, on the growth of the sentiment of respect in him. For instance, if a man has to get a meal everyday the intellect opens a thousand ways for him. He may get it by stealing a morsel of bread or by earning an honest penny; he may join a gang of robbers or engage in a noble trade. He may become a pickpocket or enter the service of a master. He may defraud any one of his meal or money or earn it by being a captain of industry. If his reason is well-ordered, he will choose the latter of these alternatives, but if his intellectual development is low, he may resort to any of the former ways. Also if his passion for a meal overcomes the check supplied by his reason he may immediately turn to stealing. In a fit of

hunger-his desire for a meal may take the lead of all other motives, or he may be in a mood of mind in which he readily becomes a victim to temptation. If he belongs to a class of professional criminals his criminal career is more or less fixed at his birth or he may be completely under the influence of a bad friend who suggests theft as the best means of obtaining his meal. Thus we see that intellectual conditions or emotional states or physical incentives from within on the organic side and social environment or individual agencies from without are the elements which exert a pressure upon the primal sources of criminality.

It may not be out of place to consider a little further how conditions of thought play their part in engendering criminality. It is of the essence of knowledge to guide human action. Ignorance or misunderstanding often leads people into erratic ways. Take the case of a child above twelve years of age; although it may know that certain acts are illegal or criminal it is scarcely conscious of their gravity as offences. For instance, it may not easily understand the social gravity of a crime like forgery. A child may know that theft is an offence but it may hardly consider it a crime to pluck a small fruit from a neighbour's mango tree on the way side. This is also the case with untutored women and adults. Another factor that gives an impetus to crime is the thought which every offender entertains

that his crime may remain unknown or that he has only a very remote chance of falling into the clutches of law. Ignorance of the legal mode of thought is at the root of fabrication of evidence to support a true case. It also confirms the impression that a bad man should be punished for his wicked conduct in the past even under colour of a false charge brought against him for the time-being. In similar cases people err under the belief that the end justifies the means. Insufficient learning proves dangerous at times. It makes a man ignorantly defiant to the authorities; it gives one a distorted view of the opposite side; it warps a man's judgment and paves the way for the erratic courses of the ambitious or self-conceited.

It need not be detailed here how even in normal men changes of mood occasioned by various circumstances incite them to anti-social deeds. Indian thought attaches great importance to three groups of emotional stages—*viz.*, Satvic, Rajasic and Tamasic, corresponding to good, middling or active and indifferent or bad temper. These moods recur in some order in a man's experience and move him to deeds of corresponding merit. Superfluous it is to refer to the acuteness of bodily cravings like hunger, thirst, etc. Social habits like alcoholism and economic conditions like poverty prompt men to crimes of a serious kind. The evils of bad company are

the determining factors of wrongful action and suggestibility of individuals prepares the ground for criminality. All these serve as auxiliaries to occasion the manifestation of crimogenous instincts in external conduct. In short criminal conduct is a result of the influence of organic and social conditions upon the psychic basis of human activity. Whether the psychic forces are subject to any laws of the psychic world independent of the physical is a question beyond the scope of academic sciences. But in the light of the new spiritual sciences which tend to develop into the former, Psychology has to take a new turn, and investigate the nature of subconsciousness, and other hidden forces of the Psyche. How can it otherwise explain phenomena like the mechanical execution, by a person, of a command given while he was under the hypnotic trance, long after his release from it? In metaphysics the question takes us to the Problem of Evil and the causes of human finitude. 'If crime be the result of a conflict between the egoistic instincts and social sentiments of man, it is really due to a failure to harmonize both, which again arises from the finitude of human powers.' Although it is neither necessary nor possible here to successfully penetrate the region of metaphysics, the views of the great Indian philosophers may be reviewed in passing. The main systems that claim our attention are :

(1) that of Sri Sankara,
(2) that of Sri Ramanuja,
(3) that of Sri Madhwa and
(4) the Saiva Siddhanta system or the system of Sri Meikanda.

Sri Sankara attributes human finitude which is the source of all evil to the self's ignorance of its true nature. What is its true nature? It is its oneness with the Absolute. He carries this ideal to the extreme conclusion that nothing exists in reality except the Absolute. Then arises the question: 'If the Absolute alone exists what is ignorance due to which occasions its mysterious self-limitation?' In answer to this, Sankara cuts the Gordian knot by ascribing ignorance to 'indescribable' Maya or Avidya a power dependent on the Brahman, but the worst of it is that he is at a loss to say whether that Avidya exists or not.

Now passing on to Ramanuja who condemns the Maya theory of Sankara in detail we find that the great Vaishnavite leader holds the view that the human self and Nature are the real attributes of God. The human selves are in God and are evolved out of him to work out their Karma. Sri Ramanuja attributes all evil to Karma. Karma is tendency to action and being beginningless it cannot be traced to any original cause. Thus he does not explain the true source of Karma. This only shows that the

finite self is distinguished from the Infinite in that it possesses an innate tendency to action. If the self is a real attribute of God, the karmic tendency must also be ascribed to Him. Here again Ramanuja gives us little to know about the essential nature of the self or God.

The great Madhwacharya strikes into a different path and keeps clear the three entities, *viz.*, (1) the Supreme Intelligence, (2) the dependent intelligences and (3) the unintelligent. The supreme intelligence knows what is best for the limited intelligences and guides them in working out their evolution. There are natural differences in the innate tendencies of individuals which are never eradicated but are developed to their absolute perfection. These tendencies fall into three classes : Satwic, Rajasic and Tamasic. The individual soul possesses nonsensuous intuition as well as sensuous knowledge ; the former lies more or less dormant and the soul is drawn to what appeals to the senses. Bodies are given to each soul in a manner suited to the development of its tendencies. In bodily condition, the state of the soul is described as Samsarabandham. What is its real bond is a subtler sheath called the Linga Sareera. While in the samsara bondage, the Jiva is engrossed by the passing scenes of life, and only in the long run discovers how forgetful he has been of his true nature. Corresponding to Garofalo's notion of incorrigibles in modern

criminology, a belief is entertained in this system that some of the Jivas are ineligible for the highest salvation by reason of the immutability of their evil or mixed tendencies. It is the stern view of Sri Madhwa that each of the limited intelligences develops its innate bent to the full and reaches the destiny quite in fitting with its essential nature.

Lastly we shall have a peep at the Saiva Siddhanta view of the question. It investigates the relation of the inalienable part of the self to the physical side of the universe. This relation is established through the icha sakti of the self. Why should this sakti incline to the physical side of the universe? The reason should be that the Psyche has got her ends to be achieved therein. Why should her ends lie on this side and not in its own world? The answer is that she has not yet awakened to a knowledge of the permanent and abiding elements on the other side. She has identified herself with the finite and the materialistic, and her association with the same must be due to a tendency in that direction. But if such a tendency be ineradicable, there can be no hope of progress or salvation. So it does not form part of her nature. Being Infinite Intelligence, God could not be held responsible for this bent of the soul. Hence in this system the association of finitude with the Psyche is considered beginningless. But not having it in her real nature the

Psyche admits of being turned away from the transient and the unintelligent. The soul is conceived in this system as being neutral just like a piece of crystal glass which takes its complexion from whatever is presented to it for reflection. Being an intelligence, her real nature harmonises more with the nature of the Supreme Intelligence than with that of the unintelligent. The true defect of her nature lies in requiring the guidance of Providence for exercising her powers in any way. If the current of her nature is turned within and upwards, then alone dawns her salvation from the bonds of the world. This is facilitated when her finitude is worked and worn out by realising to the full the evil fruits of her infatuation for the physical universe. The turning of the Psyche Godward is the far-off event to which all creation moves. All creation represents only the march of the Psyche from her inert dead state in the abysmal depth of the unintelligent to the feet of Providence at the other end. It will be far beyond our province if we push still further into this ethereal region.

Coming down from the purely psychic to the organic side of man we are confronted at the first step with the Natural Crime theory of Garofalo, one of the great Italian trio of founders of the 'New Science.' This writer traces criminal acts to want of moral sense in man and is, as a

jurisconsult, inspired by the contrast presented by the Law of Nature or Jus Gentium and the Civil Law of Roman times. He regarded as natural crimes, acts considered punishable at all times and in all places being 'Offences against the fundamental social sentiments of pity and probity in the average measure possessed by a given social group.' From the scientific standpoint it is natural crime that ought to be studied and prevented with great care and caution. His view of it is too narrow, as it is regarded as a violation of only a few of the sentiments essential for social life. He traces the evolution of the moral sense on the lines of Darwin and Spencer and attributes the wearing out of the same to ethical degeneration through retrogressive selection. He unduly emphasises the importance of moral degeneracy in the production of criminality. In his view character is once for all fixed in the case of incorrigibles as one's features so as to be impervious to all the healthy influences of education, religion and law. Society only supplies the victim and the opportunity for the deed. He scarcely estimates social factors at their legitimate value. His theory pre-supposes an ethical department of mental life little influenced by social relations. Such an idea is a psychological fallacy. His view of moral evolution is in part based on the inheritance of acquired characters, a hypothesis little favoured by students of

heredity. His theory of psychic atavism independent of the physical organism is not warranted by the Psychology of Emotions. The chief, if not the only benefit of Garofalo's theory is that it draws attention to the subjective sources of criminality and furnishes a classification, the recognition of which is of great service in penal discipline.

An older theory which traces habitual criminality to the absence of the so-called moral sense is that of Moral Insanity but this has no atavistic flavour in it. The phrase was first applied by a Scotch physician named Thomas Abercromby (1656) to a mental condition in which 'while the intellect remains unaffected the moral sentiments are thoroughly lost.' It is characterised chiefly by the absence of remorse. In the nineteenth century Prichard used the phrase to denote an overthrow of the emotional sphere. Mr. G.F.W. Ewens, the author of 'Insanity in India' uses the expression to show the intensity of anti-social emotions due to a hereditary vicious tendency. He says: 'What is usually understood by moral insanity is a condition in which a person will do any immoral act, lie, steal, injure, has no idea of meum and teum and cannot be influenced by exhortation or punishment and yet otherwise appears quite sane.'[1] It is often said to be characterised by an extraordinary ingenuity in

1 Ewen's Insanity in India, p. 257.

justifying one's wrongful behaviour. He extends the phrase also to disorders due to (1) a residum of previous insanity, (2) an intellectual change occasioned by injuries to the head and possibly insolation, and (3) as a feature of simple mania, epilepsy and of one-sided genius.[1] The expression really signifies a pathological condition of the nervous system in which the higher association centres are not affected. Being applied to disorder of the human personality as a whole, the term 'insanity' is too inexact to be applied to a disorder or defect of the affective side alone. The use of the term 'moral' is derived from the conception of the moral sense put forward by Locke and other seventeenth century philosophers. Thomas Abercromby might have used the expression to indicate inability to understand and appreciate moral distinctions. Even for that purpose the word 'imbecility' is more appropriate than the term 'insanity.' The phrase has now given way to 'criminal imbecility.' But Professor Parmelee limits the phrase 'moral insanity' to lunacy which supervenes after birth but is traceable to pre-natal conditions. His view appears to be that imbecility must be congenital.[2]

The theory of moral insanity pre-supposes an innate pathological character with immorality as the decisive trait. This position is completely negatived by the relation between character

1 Ibid, p. 260. 2 Parmelee's Criminology, p. 157.

and intelligence 'which cross one another in perplexing lines.' Men of high intellect lapse into crime owing to weakness of will or influence of passion or bad social environment or other circumstances. Besides, the standard of morality varies with the progress of the race from time to time and from place to place so that there can be no fixed faculty called the moral sense. If moral insanity be regarded as a condition of degeneracy, it is very improbable that the will and the intelligence remain unimpaired in any such state. Even then degeneracy and criminality are not identical. Dr. Healy briefly reviews a number of authorities on the subject aud comes to the conclusion that 'if the moral imbecile exists who is free from all forms of intellectual defect, he must indeed be a *rara avis*.'[1] Individuals so termed appear to be mentally normal but a well-rounded investigation has shown distinct abnormality in some field other than the moral sense. Among a host of writers on the subject Berze and Gudden correlated moral insanity with uneducability. Gudden bases it on lack of brain development. It is now generally recognised as a pathological phenomenon due to incomplete cerebral development.

The old theory has had its day and yielded place to recent investigations on Feeble-mindedness. Lombroso made a comparative study

1 Dr. Healy's "The Individual Delinquent," p. 788.

of the physical and psychical anomalies of the born criminal, the moral insane and the epileptic and came to the conclusion that moral insanity was a form of latent or attenuated epilepsy. He says, 'Epilepsy represents the genus of which moral insanity and criminality are the species.' This theory may be reviewed later on. For the present the phenomenon of feeble-mindedness leading to criminality claims our attention. The Report of the British Royal Commission (1908) for the study of the Feeble-minded defines mental defectives from the social standpoint. Mental defectives are those suffering from 'a state of mental defect from birth or from an early age due to incomplete cerebral development in consequence of which the person affected is unable to perform his duties as a member of society in the position of life to which he was born.'[1] Such defectives as cannot guard themselves against common dangers belong to the lowest grade, *viz.*, the class of idiots. The next higher grade consists of defectives who are unable to earn their own livelihood as, when put to a trade, they will not stick at it or do it with moderate success. The high grade imbecile is he who is capable of earning a living under favourable circumstances, but incapable of managing his affairs with ordinary prudence. The psychological classification of imbeciles is made by

1 Dr. Healy, p. 449, 450.

the application of mental tests on the principle that up to a certain age the intellect grows with the body from year to year. At least as regards the development of intelligence up to the twelfth year psychologists have fairly agreed as to certain standards. The system of tests that is mostly in use is that of Alfred Binet who in 1908 published a set of tests graded up to the thirteenth year. His standard was taken from the public school children in France. His tests for ages above twelve are uncertain. Several revisions of the same were made by American and German writers. The system being built for a homogenous people, its application for a cosmopolitan population is a little inexact. Further, it gives undue prominence to language ability. It may not give us a fair estimate of people who may be suffering from inability to speak fluently and with ease. However, it is a great contribution to modern psychography. Its findings are to be construed in the light of physiological conditions and social status pertaining to each case. Dr. Healy and certain others have devised a modified system of common sense tests for detecting the mental weakness obscured by linguistic and other special abilities. The American Association for the study of the Feeble-minded has adopted the classification of defectives on this basis. It divides them into three classes, *viz.*, idiots, imbeciles and morons. Idiots are those who are able to do only

the tests prescribed for a normal child of two years. Imbeciles are able to do the tests up to the level of seven years and morons up to the age of twelve.

Idiots are easily detected and safeguarded. Only the high grade imbecile or moron is not well-known to the public. Goddard, the Director of Researches in an American Institute, has published a revision of the Binet system and in his 'Criminal Imbecile' has given an analysis of three remarkable cases in which the use of Binet tests was allowed and the plea of criminal imbecility was fully accepted at least in one case by the American Courts.

In the first case a lad of sixteen years, named Jean Gianini, was charged with the murder of one Lida Beecher, his former teacher. The defence was that the accused had only the intelligence of a ten-year-old child quite incapable of realising the enormity of his crime. The jury accepted the plea of weakness of mind when the accused was proved to be a high grade imbecile. On an evening between 7 and 8 o'clock the accused committed the dastardly deed, but showed no sign of perturbation; at 8 he was in his house, went on an errand, returned shortly, spent some time in reading and went to bed. Next morning he was at his place of work. Although owing to his wanderlust he subsequently

strayed away from his master's house he made a free and open confession as soon as he was arrested, taken to the justice of the peace and stripped. No stain was found on his cloth. He expressed in detail how he perpetrated the murder and what had been his movements before and after the deed. There was little evidence against him but his confession. He was informed that his confession would be used against him. Still he persisted in making a clean breast of the whole affair. Egoism was a prominent trait of his. The motive that was attributed to him was inconceivably trivial. It was thought that he wreaked his revenge on the victim for chastising him a year back. But Goddard takes care to explain that his purpose, as may be judged from the nature of imbeciles, was probably sexual. The experts were giving him every possible help at the time of his trial; still when his dinner was brought into his cell he could think of nothing but eating it and he ignored the people who had been sent to help him. One of the experts said, 'As between soup and safety Jean prefers soup.'[1] What more is needed to prove his remorseless frame of mind.

Goddard says that at least 66 per cent of feeble-mindedness is due to hereditary causes. In the case of Jean his grand-father was born on the south side of the Alps where cretinism is very

1 Goddard's Criminal Imbecile, p. 31.

common. His mother was insane and alcoholic and he was the third child of his parents. Jean did not talk until he was five years old; his mother's health broke down before her first babe was born.[1]

The second of the cases given by Goddard is the case of Roland Pennington, another high grade imbecile subject to the influence of abnormal suggestibility. While Jean was a self-conceited type of imbecile, Roland was one who yielded to anybody's influence and exhibited no signs of individuality. He was a farm labourer charged along with another man called March with having slain one S. Pinkerton Lewis, the manager of the farm. The defence of March was that he merely assisted young Pennington in disposing of the body; but the latter made a confession which implicated March quite as much as himself. For March, the motive was sexual jealousy roused by a suspicion of illicit relationship of the victim with his wife. But for Pennington it was merely 'a motiveless malignity.' While in jail, he evinced no remorse and took no interest in the case. After the murder he took no care to remove the evidence. With regard to motive, cupidity could be attributed to him. Even after the deed he did not insist on receipt of a portion of the money, which March stole from the victim, or complain with reference

1 Ibid, p. 40.

thereto. He even proposed to give him half of the four dollars received from him for a pawned watch. He was acting completely on the influence of March's villainous suggestion. This case is significant of the manner in which weak minds work under the control of evil advisers.

The third and the last case given by Goddard is the case of Fred. Tronson, an adult imbecile of twenty-four years of age with a mentality of only nine years. In August 1914, he was charged with having shot a lady named Emma Ulrich for refusing to marry him. He also made a confession of his crime and said, 'I asked her if she would have me; she said she would wait outside at noon; of course I threatened to shoot myself if she would not have me.' As Goddard puts it, Society should have taken him in hand twelve years ago.

Indian cases of precocious criminality should be examined to see whether the offenders therein were criminal imbeciles. In Trichincpoly, a couple of boys aged fourteen and ten killed their play-mate by pressing him under water for the sake of jewels. What leads us to suspect imbecility in this case is the fact that the accused made a clean breast of the whole matter and returned the jewels. In 1914, a lad of twelve lured a child of six years into a forest and stripped the jewels, the victim cried and was killed at once. In 1918, two little boys at

Tanjore, aged ten and eighteen, fought over a cake and the older threw the younger into a tank.

The types mentioned above have gained some public recognition in the United States. Dr. Healy's researches show that there may be several other categories of mental defectives that the lay public may fail to recognise. There are persons whose special abilities hide their weaknesses. If their powers make little for social success, their conduct may prove anti-social. It is quite consistent with mental weakness to be remarkably cunning, to possess powers of retention and have a special genius for language or any constructive art like music. Those with remarkable verbal powers are the least recognised by reason of their capacity to get through the Binet tests. The verbalist type of defective is often a liar and gives great trouble to society. Dr. Healy gives the instance of a Russian girl, Clara by name, evincing a remarkable mental ability and managing to pass for a normal individual. She was clearly feeble-minded and never able to retain a position for more than a day or a week in spite of her best intentions. She was guilty of truancy in her early years. Her expression was silly, but she spoke good Russian, read and wrote fair German, and had picked up a working knowledge of French.

She was not suffering from any sort of psychosis. Her sex delinquencies made segregation very necessary.[1]

Far less dangerous to society are those defectives who possess normal insight into their limitations in respect of industrial ability, who consequently avoid social conflicts of their own accord and move in humble ways of life. Similarly there are people whose motor ability gives them strength to work and earn well. These men yield to temptations only under very suggestive circumstances or when forced into spheres for which they are not fit. A typical cab and waggon driver was absolutely honest and normally affectionate; he was well aware of his weakness. When in school life, he was guilty of truancy because of retardation in school work. His delinquencies were mainly in the nature of assaults and the use of abusive language when in a bad temper. By the age tests he was found feeble-minded. This shows that a great number of men in society may pass unrecognised as defectives.[2] Dr. Healy speaks also of a different group of defectives called subnormals whose position is on the border line between feeble-mindedness and normality.

Some are lacking the power to handle anything savouring of abstraction but have good

1 Dr. Healy's Individual Delinquent, Case 87, p. 476.
2 Ibid, p. 468.

perception and memory. Where powers of judgment and foresight are required, these men fall below the mark and are not able to show strong characteristics in difficult situations. Especially girls of physical and mental attractiveness may not owing to want of appreciation of circumstances exercise sound judgment at critical moments, and in consequence they pave the way for sex delinquencies.

Some persons become prone to anti-social conduct owing to faulty adaptations to environment. Right places should be chosen for them and an alteration of the environment may be necessary to bring about a change of behaviour. Persons smitten with arithmetical defect lack in an important normal capacity. Language defect also handicaps men in social life. The great complexity of neural mechanisms may affect powers of perception and reproduction of the language. One who was an utter failure in arithmetic was forced into an occupation where an acquaintance with it was an indispensable condition of success. But his failure was attributed to his general laziness since his real defect remained unperceived. A boy who had to strive with two languages when he was not able to learn one was deemed incorrigible owing to use of bad language and the molesting of girls who got shoved ahead of him at school. Change of environment with special methods of instruction soon

changed his character. Similarly a boy who came of a high family was deficient in language. His delinquencies of disobedience and truancy were the direct results of his school retardation, but his parents viewed the matter the other way.

In the case of the delinquent who is subnormal for his own sphere, an anti-social attitude is developed on account of contrasts and incapacities. For instance a boy may not be able to master high school studies while all his relatives may be college people. Viewed in this manner, there may be localised spots of weakness in almost all men, but the difficulty arises only where the defects are in matters of social importance and when they cannot be remedied. A proper choice of profession and surroundings may reduce to a minimum the tendency to anti-social conduct on the part of such men.

Thus far we have dealt with the weakness of intellectual powers as conducive to criminality. We have also to take into account the weakness of restraining sentiments or lack of self-control, which is invariably the result of feeble-mindedness, insanity or constitutional inferiority. It may also be a characteristic of adolescence or senility. In certain cases lack of self-control is apparently associated with no other disability. People suffering from it are called control defectives. They show a terrible susceptibility to suggestion. For instance, a boy of

seventeen years was repeatedly charged with stealing and running away from home, breaking into a freight car and the like. But he erred only in company with others, *i.e.*, he was always amenable to the evil influence of bad companions. He showed remorse and possessed many good qualities. He would weep bitterly over his wrongs and assert his desire to do better. He was 'pleasant, responsive and affectionate' but could not resist the ordinary temptations of his environment. This kind of lack of self-control should be distinguished from a miserable want of restraining power found associated with structural or functional anomalies. The latter is called 'psychic constitutional inferiority.' Its chief feature is unusual emotional reaction to ordinary conditions of life. Mental fatigue and a feeling of impotence are also its characteristics. The tendency to impulsions and perverse conduct alternates with remorse and good intentions. Most of the constitutional inferiors are degenerates. This condition may also be due to bad sex habits. In certain cases it is congenital.

Lack of balance is also the main cause of erratic courses during the adolescent period of life. Mental troubles of this period may be due to innate tendencies raised to the surface by pubertal conditions or those incidental only to the pubertal period. Need of self-control sometimes takes its rise in mental dullness resulting from

changes in physiological conditions like want of blood supply to the brain cells, diseases like jaundice, etc. It may also be due to excessive use of stimulants, indulgence in sex habits and epileptic attacks, etc. Often such dullness is associated with mental defect but this is not always the case. In some instances it is cured by building up on the physical side.

There are a few other peculiarities which cannot be identified with any type of amentia or dementia or constitutional inferiority. These have no basis in the physical system so far as our knowledge at present is concerned. Abnormal suggestibility is a very important factor in criminalism. It varies in potency with individuals at different periods of life or moods of mind. At suggestion some are self-assertive while others show a passive acquiescence. Self-assertion in the right direction is a great corrective. The victims of suggestion often play the part of accessories or accomplices. This weakness sometimes develops a hero worship in persons who have not cultivated an independence of mind. Sometimes a shrewd 'old timer' delinquent is looked upon as a hero by a neophyte. Social suggestibility is the psychic basis of riots and rebellions. It uproots the normal moral sense for the time being and converts men into a mob of rebels. The spirit of revenge is often the result of social suggestion. Personal influence is

sometimes due to overt or sub-conscious sex relationship, as in the case of husband and wife yielding to each other's influence in criminal conduct. The highest level of it is found in hypnotism. Garofalo denies a medico-legal basis for it. Goddard views it as a form of potent suggestion exercised at a time when a person is thoroughly off his guard and the promptings of his thought are deadened by soft sleep. Some doctors hold the view that under hypnotic influence a man cannot be compelled to do anything clearly contrary to his nature. We have a case of dual suggestibility when two persons dare to commit a crime which one of them alone would not.

Obstinacy is a feature of general conduct with some. It is called contra-suggestibility. He who has much of this stuff in his constitution is ready to do the opposite of whatever he is told. It often results from some untoward and hidden experience in life.

The influence of environmental suggestion on imagination is often left unnoticed. It is in the form of mental imagery of a seductive type and of mental conflicts and repressions. These phenomena are often experienced by juvenile criminals. The connexion between the kind of imagery perceived and the variety of crime that results in consequence is not discernible to us so clearly as to the patient. Individuals suffering

from the obsession of mental imagery maintain that their whole welfare depends on preventing the recurrence of such imagery. In such a condition of mind a man may feel the walls opening up in the dark at night and blood and thunder scenes being enacted therein. It is often due to mental vacuity. The imagery is predominant only in the absence of healthy mental interests. Visual pictures exercise a ruling influence and arise mostly from witnessing portraits. Even stories read or heard are translated into visual terms. A good girl of twelve was impelled to steal by obsession of a moving picture representing a common theft, the thief being undetected. A little boy of thirteen years was guilty of petty thefts in stores. He said to the Police that there was something inside him that said 'go, go, go' and that he had no power to control himself.[1] Stirring incidents and picture shows often induce a morbid mental imagery.

Mental conflict is some emotional disturbance arising mainly from instability of temper or sensitiveness. Some doctors are of opinion that this phenomenon has a neuropathic basis. The psychological causes thereof are many and some of them may be noted here: (1) "uncertainty on the part of a child or youth as regards its parentage creates a deep-seated emotional disturbance leading to delinquencies; (2) hidden

1 Dr. Healy's The Individual Delinquent, p. 356.

emotions like home-sickness develop an extremely vindictive anti-social attitude; (3) harsh treatment of sensitive and free natures creates feelings of alienation; (4) affairs of sex life lead to the substitution of delinquencies." Dr. Healy gives us a number of instances illustrating each.

(1) A boy of twelve years of age was deeply stirred by the information that his own mother was long since dead and not at all the person he supposed she was. He at once got the impression that this was a world of lies and set out on a criminal career. (Dr. Healy's Case 68.)

(2) A girl of twelve years was guilty of lying and refractoriness at school. This was due to her hyper-sensitiveness affected by being kidnapped from her father by her other sisters when her mother died. With return to her father's house her delinquencies were at an end along with her headache and she gained in weight. Hyper-sensitiveness makes youths easily wounded and depressed. (Dr. Healy's Case 74.)

(3) A boy of sixteen was well-behaved up to the age of fifteen. Suddenly there was a change in his character. Since then he had not held any job. He attempted to get money by forging his father's name and obtained supplies on his father's credit. The reason of the change was that his kind father one night resented that his

son had missed a couple of days at work, without knowing that the boy was ill. When he was informed of his illness the father remarked, 'It is a lie, he is no sicker than I am.' Ever since the son heard this, 'things had been going backward with the boy.' He said that up to the time of the undeserved reproach he had never told a lie in his whole life so far as he could remember. He never even smoked before that time. He had given all his earnings to his father. (Dr. Healy's Case 73.)

(4) Sex experiences are mainly at the base of mental conflicts. A ten-year-old boy coming of a spotless family displayed delinquent tendencies in the face of excellent opportunities for wholesome mental occupations. Bad companions introduced him to the secrets of sexual life but the boy resisted the tendency to immoral practices in ever so many ways. But his association with wicked fellows has led him to stealing money, tobacco and supplies from stores for the company life they had maintained. He was often obsessed by mental pictures which disturbed and misled the boy into erratic courses. One day when he drove his wagon past a restaurant, he saw a young woman, whom he knew, at a window. 'Ideas of her flooded his mind' and he grew restless and uncomfortable to a degree. Confusion grew within him as he persisted in maintaining his principle of sexual abstinence. After

a while, he drove his horse into a by-path, jumped down and made off down town. He spent in two days the amount he collected for his employer, visited restaurants and theatres, but did not consort with women. Afterwards he returned to his mother very much ashamed of his action. When he was questioned as to his knowledge of sex life he burst out with a cry 'This was the real trouble.' With the change of environment he became assimilated to his normal condition. (Dr. Healy's Case 61.)

The instinct of curiosity supplies its own forces for criminalism. Love of adventure and travel is specially violent in the adolescent period. It is defined by Dr. Healy as the 'desire for self-expansion and self-activity under unusual stimulating conditions or apart from the common paths of life.' This should not be confused with the morbid impulse to wander. Dr. Healy refers to a boy who at six years of age left home on account of his enterprising nature, witnessed several shows, visited various towns; and he made his own way everywhere by working at sundry jobs. He was guilty of only petty thefts when he was short of money for travel. Stealing and violence have often been his main crimes.

Even as a kind of sport skilful burglary is very attractive to several youths. One boy is said to have carried on his adventures in this direction every evening after properly attending

to school duties during the day. Love of adventure is sometimes the result of physical overdevelopment or association with the environment of an adventurous gang. With some persons the desire to rove may be a passing phase of their developmental life. Owing to the freedom given to children, sport is sometimes a strong motive for crime. For instance a little boy who was the son of an immigrant in America ran away from home within a few days of his family's landing in that country. An intense desire to enter theatrical life is little else than love of excitement and is intermittent in some cases. It exhibits itself in outbursts of temper, dipsomania and flagrant sex indulgences. Monotony of prison life and pathological conditions induce a morbid desire for excitement. Excessive irritability has also a physical basis in the use of stimulants, under-feeding, depletion from sex practices, sense of injured merit and despair of penury. Restlessness conducive to anti-social conduct is sometimes combined with good physical strength and mental powers.

Hitherto we have in a way covered the border-land between amentia and normality. Dr. Maudsley propounded the theory of a vast middle zone between perversity and insanity. He appears to have identified the former with moral insanity. As we have dealt with the latter, we shall now pass on to consider the crimogenous

influence of insanity. It is a disorder of the whole human personality so as to imply a disturbance not only of the mind but also of bodily functions and of conduct. Though viewed as pathological it is psychic in effect and hence its consideration as a mental factor is not here out of place. Dr. Mercier says, 'The insane person is different from his former self just as we in our dreams differ from our waking selves. The mad man passes his life in a waking dream.'[1] Insanity proper is associated with a derangement of the functions of the supreme regions of the brain. If the lower levels of the same be disordered, it is discerned by the patient himself. But in the former case it is of the essence of the disease that the disorder is not recognised by him. Tredgold regards insanity as a perversion of the neuronic function. If there is neuronic degeneration, it brings about dementia; otherwise insanity may be only a temporary neural disturbance. Although it is believed that no mental process can occur without a corresponding change in the brain, the intimate molecular alterations of the brain are not visible. They give us no clue to understand why a man entertains delusions. We are constrained to suppose that a patient suffering from a delusion has a change of structure in a part of his brain; but we cannot associate any specific structural change with any particular

1 Dr. Mercier's Criminal Responsibility, p. 79.

disorder of the brain. In certain cases of insanity disorder of conduct is most apparent. The action of the patient dwindles in complexity while it may become excessive and indirect. The patient exhibits a busy meddlesomeness. A single act of his may not show any sign of insanity; but a consideration of a whole series of acts will reveal their untoward character. The patient is overbusy in useless ways as he has lost the capacity to recognise their uselessness. Sometimes action becomes reduced to the minimum when it is often associated with depression of spirits as in melancholia. The excessively active insane 'rushes from place to place, writes endless letters, sends innumerable telegrams and makes unnecessary appointments.' This is due to loss of control of the restraining faculty. The patient whose conduct is reduced to its lowest limit retains only crude acts like eating and drinking and avoiding common dangers. With the increasing degradation of conduct he sinks in the depths of stupor.

Although owing to their incapacity to distinguish between right and wrong, the acts of the insane cannot from the subjective standpoint be called criminal (especially in the case of those lunatics who have been thoroughly law-abiding), they are so termed on account of their anti-social effect. From Gina Ferrero we gather that the acts of insane criminals are very odd and

unnatural. For instance a father hears a voice bidding him kill his favourite child. He dresses it up in its best clothes and cuts off its head with perfect calmness. Similarly a husband may kill his wife and a wife may put an end to the life of her children. What is more pathetic is their apparent mental clearness on the eve of their crime. The insane do not fear the penalty; they take little trouble to hide their misdeeds; they exhibit stolen goods in public and they are quick to give themselves up to justice. The motiveless killing of those dear and near to the insane betrays a disorder of the primal instincts which form the native basis of their mind. It is sometimes called homicidal mania.

Disturbance may be prominent in any particular aspect of the human mind. According to Dr. Mercier one or more of the various links in the psychic chain which connects any of the primal instincts with the criminal act may be disordered and pave the way for social mal-adjustment of the individual. Disorder in sensation brings about inability to recognise two strange psychic phenomena as unreal, *viz.*, illusion and hallucination. If a man sees a horse and says it is a camel, it is an instance of illusion. If under any illusion an insane person views his neighbour talking to him as a python attacking him then and there, it is quite probable that he may be driven to a needless murder of his acquaintance.

If there was no nucleus of the sensation experienced by the lunatic, then he is said to be the victim of hallucination. A Hadfield hears a voice from God while no man talks to his hearing and feels a blow where no one has touched him. In Lyon's Medical Jurisprudence is given an instance of a Bengali lunatic who once cried saying 'The pains of delivery are in my back.' Under such fancied stimulations, the madman may indulge in murderous assaults and in the use of indecent or defamatory language.

Now if the impressions received through the senses are not perceived in the light of their associated qualities, serious errors may result. If a man sees fire and does not perceive its burning quality, he may scorch his fingers by catching at it too closely. Similarly a lunatic of disordered perception may see a sheet of water, walk into it and get drowned. He may confound the voice of his friend with the cry of an enemy. Difference in sensation, perception and memory may arise by mistake even in the case of sane people; but conduct will betray insanity in a clear light. Lapse of memory often leads to an alteration of personality; when insanity may supervene and induce anti-social conduct. If a man does not remember his name, occupation or civil status or if he cannot find his way to certain places known to him he may be as much a victim of accidents as agent of anti-social conduct. In

case of excess of memory men are said to testify to the occurrence of facts that have not taken place at all. Disorder in the thinking process or in judgment is indicated by the persistence of grossly erroneous beliefs. If a man believes that a person is locked up in the next room, which he has not examined, he is not suffering from any disorder, but if after having gone to the said room and found it empty he retains the impression that somebody is shut up there, then his intellect is certainly in a state of incurable confusion.

Disorder in judgment is mainly typified by three kinds of delusion. In these delusions ideation is visibly affected only in one particular domain of thought. Hence it is called partial insanity or monomania. This is a common feature connected with the general paralysis of the insane which is rare in India. An insane person of this type may fancy himself to be made of glass. Such a man is liable to be imposed upon and misled by persons affecting to believe in his delusions. In delusions of exaltation, the patient is 'the lord of millions and millions and millions' and therefore orders goods far beyond his means. He fancies he owns the town, the country, the universe and so forth. In delusions of depression the patient is suffering under a fancied impression of misfortune or unworthiness or incompetence. He sells his business at a ruinous sacrifice. He

sometimes kills his children to preserve them from starvation. Under the belief that he is a delinquent he hands himself over to the police for a crime which exists only in his imagination. Suicide also is quite a characteristic of his.

Another kind of delusion exists where the patient feels that he is unjustly persecuted and strives to seek redress. He is called a paranoiac. Paranoiacs are credited with homicidal tendencies. But the homicidal act is committed in a mood of intense exasperation and is not likely to be repeated. A paranoiac assaults his neighbour or complains against him to the Magistrate under the delusion that he is in imminent danger of his life from the machinations of his neighbour. A Bengali kayastha Head Clerk to an Inspector of Schools, aged 42, lost a suit he instituted against a cousin of his in 1893; since then he became insane and suffered under the delusion that the said cousin and his friends were constantly persecuting him with electric shocks transmitted by telephone wires. In 1894 he attacked the cousin with an axe and was taken to an asylum where for about seventeen years he had been in that condition. Similarly a woman was under the delusion that somebody above her room was tormenting her with wires let in through an imaginary hole in the ceiling. While suffering from a religious despondency another lady drowned four of her children one night in a cistern as

she thought it was better for them to die young than grow up wicked. The delusion was discoverable with difficulty in a case of a paranoiac who once smashed the chairs in a room. His friends sent for the doctor and it was after great pains that the delusion was detected by turning the conversation on to animal magnetism. The patient was secretly under the impression that animal magnetism was a weapon of his persecution in the hands of his friends.

Paranoiac litigation is so well-known. A man prosecuted his brother for false imprisonment and duress. When he was cross-examined by a barrister he completely foiled him. No trace of the delusion was apparent in all his answers. But at the end of his cross-examination the barrister got an inkling of the fact that the witness fancied himself to be the saviour of mankind. At once a single tactful question from him brought to light the lurking defect of the gentleman. Among paranoiacs there are also political criminals who entertain the view that the country being sacrificed, the patient must be the avenger.

In several cases the logical connexion between the delusion and the disorderly conduct in question may not be apparent, as when imagining himself to be persecuted by B, A kills or assaults C who did nothing to offend him. A man who falsely believes that he is wealthy tears his clothes to rags

and washes his face in the pan of the water-closet. This shows that the delusion is not an isolated disorder. It is the superficial indication of a deep-seated and wide-spread confusion. The connexion between the act and the delusion may not be discernible just as the shallow, between two neighbouring islands, entirely hidden by the intervening sea.

On the conative side disorder of will leads to impulsive acts, which are suddenly conceived and immediately carried out. It is a result of the obsession of an impulse when the citadel of human volition is completely closed. Suddenly striking up a by-stander, throwing a chair out through the window and the like are instances of it. In this kind of disorder is involved only the immediate mental precedent of the physical act and hence such deeds are said to be motiveless and done for their own sake. This must be distinguished from what is called the irresistible impulse, which persists as a morbid desire for the immediate consequences of a criminal act. In the 'psychic chain' it is only the intention that is affected while the motive remains quite normal. For instance, the motive may be to save one's children from starvation, but the more immediate perverse desire impels the agent to do harm by killing them.

Phobias and manias represent disorders in conception. If one is terribly afraid of being in an open space or in a closed room he is respectively

suffering from agoraphobia and claustrophobia. They may be the result of neuronic disorders. Kleptomania and pyromania are instances of maniacal tendencies; the former impels men to steal and the latter to set things on fire. In these disorders the motive remains unaffected. For example theft is sometimes openly committed although things stolen are such as the thief can afford to purchase; subsequently they are not used for personal purposes but are thrown away or returned by the patient to their legal owners.

Pyromania is often pathological with women. The homicidal mania is impulsive in its nature. A reckless form of it is seen in the practice of running amuck. This proceeds from the use of an intoxicant like the Indian hemp. The impulse is paroxysmal and is followed by mental depression or loss of memory. This may also serve as a cloak to wreak vengeance on enemies.

Insanity is much less common in India than in England. Mr. Ewens accounts for this by laying stress on the absence in this country of the strain of civilised life. Lyons attributes it to the fact that many of the insanes are kept outside the asylum and that among women insanity remains concealed. It is found according to a calculation that 25 per cent. of the insane in India are criminals. Indian criminal insanes are mostly murderers or suicides.

The extent to which lunacy contributes to crime is dealt at length in Dr. Mercier's book on 'Crime and Insanity.' He says that homicidal mania is very rare and is only partial or temporary. Insanity is according to him a frequent contributory to breaches of the peace in the shape of affrays and assaults. As the insane have little power of concerted action rebellion or riot is very rare among them. It largely contributes to truancy. Rather than submit to the sedantary life of the school, a little boy of eight years suspected of insanity wandered about the streets from morning till night seeking out statues and gazing at them and going all day without food. Insane vindictiveness rarely stops short of murder. It is also instrumental in causing mischief like arson. The primal instincts are disordered when a mother destroys her child or when a father disowns his son and also when old men who have lived a respectable life up to the age of eighty marry quite young girls not yet arrived at puberty or feel the sting of homosexual tendencies. According to Dr. Mercier insanity contributes to criminality not only by occasioning an impairment of intelligence which disables the patient from understanding the nature or wrongfulness of his act or the circumstances in which an act is committed but also by strengthening egoistic instincts which divert normal desires into a criminal direction. Lombroso in his 'Man of Genius' correlates insanity

with one-sided genius with a view to explain the contradictions, errors and mad traits in men like Julius Caesar, Napolean, Marlborough, etc. Hitherto we have been dealing with purely psychic sources of crime without referring the same to their bases in the physical organism. Insanity traceable to organic elements will be presently dealt with. As the psychic side of the organism is inextricably bound up with the physical, the latter also deserves attention at some length especially in the light of the theory propounded by Lombroso the pioneer and founder of Modern Criminology.

B

ORGANIC CAUSES.

The causes of crime that we considered above were recognised ever so faintly even as early as the days of Aristotle. However, it was another current of thought as old as this that expanded in the hands of Lombroso into the science of criminology in the last quarter of the 19th century. It was the search for physical symptoms of moral deformity. Whatever is associated visibly with man in the universe was rifled with a view to discover the invisible part of his. Even before thought was systematised in this line, poets and wise men have expressed views in confirmation of this idea. For instance, Homer describes Thersites as possessed of a deformed appearance with scanty hair and a pot-like head. Of all the physical features it is

the face that strikingly registers variations in emotion. The great Tiruvalluvar says: " அகத்தது காட்டும் பளிங்குபோல்—நெஞ்சங் கருத்தது காட்டு முகம்" 'Face it is that reflects like a mirror what affects the heart.' Solomon said, 'The evil heart altereth the face.' Aristotle correlates facial expression to habits of vice and crime. In a treatise attributed to him is found the description of features characteristic of various dispositions. For instance " those having noses with bulbous ends were regarded as insensitive and swinish, those with sharp-tipped ones were considered of an irritable temper and the impudent nose had a slight notch at the root." Socrates is said to have recognised the abilities of Plato at first sight. Cicero has recorded the fact that a physiognomist named Zophyrus purporting to know the habits and manners of men from their bodies, eyes, face and forehead, characterised Socrates as stupid, sensual and dull and when the philosopher's disciples laughed at the remark, he confirmed the opinion by admitting that he was such before the study of Philosophy modified his character. Socrates is credited 'with a flat nose, prominent eyes, shabby dress, grotesque ugliness and Silenus-like face.'

In literature the grotesque description of Asuras and Rakshasas by Indian poets as red-haired and possessed of canine teeth, etc., is designed to reflect the base and degraded

character of certain fierce races of antiquity. Shakespeare pathetically brings home to Richard III a consciousness of his deformities:

'But I that am not shaped for sportive tricks
Nor made to court an amorous looking glass;
I that am rudely stamped and want love's Majesty
To strut before a wanton ambling nymph;
I that am curtailed of this fair proportion
Cheated of feature by dissembling nature
Deformed, unfinished, sent before my time
Into this breathing world, scarce half
And that so lamely and unfashionable
That dogs bark at me as I halt by them.'

Elsewhere he is described with one shoulder at a higher level than the other. With reference to art, Gina Ferrero says: 'The assassins, executioners and devils painted by Montegna, Titian, Ribera, etc., embody with marvellous exactitude the characteristics of the born criminal.' Among the unlettered, ideas of physical indications of inborn perversity have become current from time out of mind in the language of proverbs like 'Believe as you may the thief, beware of believing the dwarf.' 'Greet from afar the red-haired man and the bearded woman, etc.' Dr. Havelock Ellis draws attention to a mediæval edict which ruled that if two persons were suspected of a crime the more deformed of them should be presumed to be guilty.

Of the predictive systems of foretelling developed on this theme, Physiognomy takes the

lead of all. Even to-day Chiromancy or Palmistry has a strong hold on those who believe in divination of fortune. It occasionally purports to read one's character from the lineaments of his hands. Onychomancy purports to read character and fortune from the disposition of one's nails. We need not trouble ourselves with a host of similar ancient systems like Metoscopy, Ophthalmoscopy, Podology etc. In modern time Calligraphy or the reading of character from handwriting bids fair to become a subject of scientific study. This was faintly foreshadowed by poets like Scott who said 'The character of Lord Chatham's handwriting is strong and bold.' Of Pitt it is said 'he wanted the lofty ideas of his father; you read it in his handwriting, great statesman though he was.' Disraeli says, 'Handwriting bears an analogy to the character of the writer as all voluntary actions are characteristic of the individual.' The main principle is that the style of the hand retains its prominent features steadily enough through life although details may and do alter under various circumstances. The permanent traits are general forms and shapes, stops, crossings and flourishes. Napolean is said to have signed his name in eight different forms in eight memorable moments of his life.

Of these systems of thought it would not be out of place here to follow in brief the development

of two of the most prominent, *viz.*, Physiognomy and Phrenology. Physiognomy has been a growth of centuries in Europe and in this country. Although some writers like Pliny condemned the idea that outward expression could indicate the inwarddisposition, others like Polemon foreshadowed the view of Lombroso to a marked degree. In the last century Lavater and Gall were exponents of this system of prediction. Lauvergne, a disciple of Gall, who was in charge of the convict hospital at Toulon devoted himself to the study of prisoners' physiognomy. He anticipates Lombroso in his description of the cold-blooded type of assassin who is 'distinguished by marked protuberances, unusual development of the masticatory muscle, and a face bearing the stamp of a brutal and impassable instinct.'

In modern times Physiognomy has been restricted to the study of the expression of the emotions in terms of muscles. As early as 1806 Bell's essay on the Anatomy of Expression briefly treated of emotions as revealed by muscular changes. Later on Darwin in his ' Expression of the Emotions ' has explained how if the same state of mind be often expressed by the same series of muscular changes the latter tend to be repeated even when there is no use for them. He also shows how habitual muscular action of some kind may, by affecting local nutrition, alter at least to a certain extent the contour of such bones and

cartileges as are connected with the muscles of expression, for when the sensorium is strongly excited, nerve force is generated in excess and is transmitted through the habit-worn paths of association. The experiments of G. B. A. Duchenne show that the action of separate muscles could be studied by the use of electricity and accurately represented by the aid of photography.

Physiognomy of old gave place in Gall to Phrenology of a refined kind. This system really originated with Galen about the beginning of the Christian era. Before the birth of Phrenology the ancients believed that the heart was the organ of thought and passion and the head was a cold region whose influence was needed to mitigate the warmth of the heart. It was Galen that initiated the experimental study of the brain. He confirmed the idea that the brain is the seat of the intellect and that the abnormal development of any part of it disturbs the balance of normal activity. Beside this, another idea grew up that the size of the brain might be measured by the size of the skull, so that a malformation of the skull indicated a corresponding disorder in the structure of the brain. In the latter half of the eighteenth century Gall and his disciple Spurzheim propounded the theory that intelligence consisted of twenty-seven faculties each with its special seat in the brain. He placed certain

of the faculties in the cerebellum. The mere remoteness of one organ from another had according to Gall an influence on the constitution of the mind. But this localisation of mental powers was quite unscientific and the cerebellum had already been proved in Gall's day by Flourens and others as the seat of no mental faculty.

Recently the search for localisation was undertaken in four different ways. The first has been called the physiological method. By examination of the functions of the various parts of the cerebrum, the visual, the auditory, the olfactory and precentral or motor areas in the same have been spotted with some definiteness. The second method is by scientifically examining the structure of the various regions of the brain and the nature and arrangement of the nerve cells comprised therein. This is called the anatomical method. A third method is by comparing the general features of the brain as represented in the various types of animal creation. This is called the histological method. The pathological method is by observing the effects of artificial excitation of different parts of the brain and the effects of the renewal of various circumscribed portions thereof. At the beginning of this century Dr. Bernard Hollander attempted to bring Gall's researches into line with more modern observations by following the last of the methods above mentioned. [1]

1 Encyclopædia Britannica, Vol. 21, p. 539, 540.

One set of cases he examined was with reference to perversion, exaltation or loss of some definite instinct in cases of injury or disease of the heart or of the brain. These were quite in favour of localisation. In this field one Carus in his book on Craniology published in 1840 anticipates Lombroso in respect of cranial anomalies of delinquents and attributed to the born criminal a narrow forehead, insufficient development of the occiput and the unusual length of the cranium. It is the examination of the cranium of a villain that revealed to the Italian founder the conception of the type of instinctive delinquent for the first time. The net result of pre-Lombrosian studies and researches was that the expression of emotions might leave marks physically identifiable and that structural or functional anomalies of the brain might indicate variations in dispositions which would be factors in criminality.

By the way, we may have a peep at the predictive system of the Hindus called the Science of Samudrikalakshanam. A brief treatment of it is found in Varahamisra's Brahatsamhita. It presages fortunes and character by an examination of a variety of factors, *viz.*, height, weight, gait, girth, blood, voice, complexion, nature of the flesh and oily secretions emanating from certain parts of the body. A few illustrations will not be out of place here. If

the feet have the colour of burnt clay one will be the murderer of a Brahman. If the belly be uneven with depressions and elevations or the collar bones irregular, or the chest covered with stiff hairs and illformed like that of a pigeon, the ears covered with blood muscles, the hands shaped like those of a tiger, the eyes oblique or with a downward look, laughing accompanied by the closing of the eyes, the man who possesses them will be wicked and a sinner. The person who has feet of a yellow colour, sunken knee, two folds of skin across the body, a nose appearing as if incised, brows bent in the middle and broken lines of the forehead will be guilty of sexual offences. If in a male the navel turns from right to left or the face is rectangular he will be a cheat. One with a moustache glossy and scanty will be a thief. If one's forehead be deep he will be put in prison.

In respect of women, if the little toe or the one next to it does not touch the ground, the eyes be wild with the colour of a mixture of black and yellow, and there be dimples in the cheek while smiling, a lady who possesses them will be an adulteress. A woman with large and unequal teeth of a disagreeable appearance and black gums will be sorrow-stricken and addicted to stealing. A high hip and rough hair would indicate quarrelsomeness. Superfluous it is to detail any more of this kind of prediction.

It is interesting to note the way in which Lombroso came upon the conception of the criminal type. He has said that he did not get the idea under the spell of a single deep impression but only as the off-spring of a series of observations. The first idea came to him in 1864 when in the course of his studies on the Italian soldier, he was struck by differences in habits and physical traits between the honest soldier and his vicious comrade. In 1866 he began the study of Psychiatry on experimental methods and realised that it was necessary to make the patient and not the disease the object of attention in treatment, and he sought to apply the principle to the study of criminals in 1870. In the course of his work, he chanced to examine the skull of a notorious brigand whom he knew and on the occipital part of it 'exactly where a spine is found in the normal head' he came upon a distinct depression similar to that found in inferior animals of the rodent category and named it median occipital fossa. Another feature he observed was the hypertrophy of the vermis (*i.e.* that part of the spinal card which separates the cerebellar lobes). This was like a small intermediate cerebellum like that found in apes, birds, etc. At the sight of these Lombroso said: 'I seemed to see all of a sudden lighted up as a vast plain under a flaming sky the problem of the nature of the criminal, an atavistic being who reproduced in his person the ferocious

instincts of primitive humanity and of inferior animals.'[1] Subsequently he discovered numerous anomalies organic and psychic of the born delinquent and thereby laid the foundations of Criminal Anthropology. With an eye to accuracy he often instituted comparisons between criminals and non-criminals of the same class in society. About the year 1893, he was able to gather records of examination of 54,000 cases. Most of the biological data in the shape of cranial and physiological anomalies were such as would be subject to the least variation among the normals. But since the anomalies found in criminals were also discovered to a certain extent in normal men, it was concluded that the type of the criminal was indicated by an aggregate number of them occurring in him. According to Œttingen the criminal type is distinguished by more than five anomalies, the normal having less than three. In the words of Gina Ferrero, 'just as a musical theme is the result of a sum of notes and not of any single one, the criminal type results from the aggregate of these anomalies which render him strange and terrible not only to the scientific observer but to ordinary persons who are capable of an impartial jugment.'[2] Further it is said that some of the cranial deviations occur in a double or treble proportion in criminals, such as sclerosis, the epactal bone,

1. Gina Ferrero Lombroso's Criminal Man, Introduction, p. 15.
2. Ibid, p. 49.

the retreating head, exaggeration of the frontal sinus, superciliary arches, median occipital fossa, open internasal suture, etc. From these the conclusion was drawn that a human being with such an anomalous constitution could not have the same characteristics as the normal member of our society. Besides, Lombroso compared the anomalies of the criminal with the organic peculiarities of savages and the lower animals. For instance, he found that the hypertrophy of the vermis prevailed among 40 per cent. of a South American Indian tribe called the Aymaras of Bolivia and Peru. It is found also in the lower types of apes, rodents and birds. Likewise, prognathism, *i.e.*, the projection of the lower part of the face and the jaw is a common feature of the Negroes and lower animals. Then he traced the criminal instinct even in plant life and formulated the theory that the type of the born criminal, who is so constituted as to be organically impelled to crime is an atavistic phenomenon in civilised society. Atavism is the reproduction by hereditary transmission of a distant type in racial development. It is the first feeble indication of the reaction 'opposed by Nature to the perturbing causes which seek to alter her delicate mechanism.'[1]

Now the theory of Lombroso rests on two hypotheses :

1. Ibid, p. 135.

(1) That there is a type of the born criminal distinguished from the normal man by organic and functional anomalies and peculiarities.

(2) That the occurrence of the type is atavistic.

These hypotheses have met with strong criticism in Germany, France, England and other European countries. The German critic Dr. Baer gives the most detailed criticism of them in his book 'The Criminal'; while the French Professor Manouvrier is most poignant and brief in his attack. Space here permits only a brief criticism of the theory. As regards the distinction between the normal and the abnormal delinquent it should be borne in mind that crime being a social phenomenon none can be deemed criminal unless he commits an anti-social act. Further, whatever interferes with the regular life of society is regarded as abnormal. But for social environment, mere tendencies to crime would hardly issue in action. Hence the social distinction of normal and abnormal need not be shifted to Biology especially as we have no criterion of the normal man by which all deviations may be measured. In view of the complexity of the structure of the human brain it is undoubtedly difficult to determine the physical boundaries of the normal. A perfectly regular formation of the brain is no index of

mental health as defects may be functional or due to microscopic changes in the cells of the cortex. An eminent Russian anatomist, Sernoff by name, for whose opinion the German Criminologist Aschaffenburg has a high value, regards most of the histological anomalies as deviations within the margin of the normal type of evolution, while accepting two of them as characteristics of the criminal, *viz*:

(1) separation of the calcarine fissure from the occipito-parietal fissure and

(2) the relative smallness of the frontal bone along with the strong development of the skeleton of the face with resultant prognathism. These abnormal features are regarded as indicative of pathological processes and development.[1]

Dr. Healy objects to the theory on the ground that it does not place men scientifically in their proper category and that the influence of environment is hard to separate from biological inheritance.

Acts may be traced to their psychological bases which may in turn be associated with anatomical conformation. If a fact can be explained by actually existing causes what is the need for the search for organic stigmata? Investigations have shown that reliable external signs are found wanting as regards the born type.

1 Aschaffenburg, Crime and Repression, p. 174, 175.

If the anatomical conformation of the criminal is calculated to give him strength to act can it on that account be held to be the source of criminal tendencies? As Professor Manouvrier puts it 'Crimes pre-supposing a conformation permitting of needs and demanding their accomplishment, it would be proper to examine the authors of them for abnormal characteristics only if such conformation and needs no longer exist.' At any rate it is wrong to connect criminal acts with organic traits as if these acts had the value of irreducible functions. Professor Ferri of the Italian School admits that in view of the historic indeterminateness of crime, it is the motive and not the act that should be considered criminal.

In the light of these criticisms, Sommer modified the Lombrosian position by declaring that although there might be no born types there might exist a born delinquent in whom the impelling forces drive him to crime, when opportunity is obtained. This much should be accepted on all hands that the innate disposition to yield to temptations and commit crimes may be specially strong in certain individuals rather than in others. This points to the psychological differences incidental to individuality. The question whether any physical stigmata are correlated to particular psychological elements has not been completely settled. The psychological types dealt with in the first part of this lecture are not associated

with definite physical signs although in certain cases like psychic constitutional inferiority certain an omaliesas those given by Dr. Healy on page 577 of his book form a regular accompaniment. Nothing more has been ascertained in this direction; still there remains the difficulty of associating any specific anomaly with the criminal activity of a particular description.

However, Professor Ferri claims the capacity to distinguish the murderer most clearly from other classes of criminals, and describes his type as marked by ' the retreating forehead, enormous jaw, cold stare, cadaverous paleness and thin lips.' He attaches special importance to the expression of the eyes and the formation of the jaw. Two instances from his personal experience are very instructive. In the course of his examination of a large number of soldiers, he observed one to be of the type of the born criminal, and volunteered his opinion that that man must be a murderer. On enquiry the fact, till then unknown, came to light that he had served fifteen years in prison for a murder committed in childhood. He similarly detected another boy-murderer in a House of Correction at Tivoli, who had ' killed his brother by crushing his head with a stone.' He has a hit at Tarde by pointing to his remarks about an assassin: ' Among these workmen I saw a young and vigorous fellow with the physiognomy of a hyena

and a sinister hard look.' Further, he refers to two mathematicians Winckler and Berends who found out by applying differential calculus to anthropometric data that normal persons and criminals constituted two distinct groups corresponding to the actual and profound diversities of an anthropological type. The fact that prognathism, absence of beard, smallness of the skull and left-handedness are found in women as much as in criminals, does not detract from the value of the theory, since the secondary characteristics of sexuality are not really symptomatic of perversity in the latter. If members of one sex possess the traits of the other, that itself is sometimes regarded as an anomaly in the eye of the criminal science. However, the presence of anomalies may not imply any delinquent tendency if they have been superficially inherited from one of the parents, the other transmitting virtuous traits. It is also possible that one's social surroundings might be exceptionally good enough to afford no scope for the expression of his perverse tendencies. One thing to be borne in mind is that even according to Lombroso, there are several grades of criminals according to their anthropological organic characteristics, and the passage from one grade to another is insensibly achieved by dint of the assimilation of corrective influences, so that at a certain stage the distinctness of the type may be completely blurred and blunted. When organic characteristics tend

to disappear criminality should be traced mainly to external causes.

Secondly, the question whether the anomalies noted by Lombroso are really atavistic has been disputed by a host of writers. What may be traced to pathological sources or professional criminalism need not be atavistic in its character. For instance epilepsy itself accounts for most of the anomalies as recognised by Lombroso in the light of his later researches. Cranial asymmetry, the thickening of the meninges and other changes in the cerebral system found in criminals are traced to neuronic diseases. Gina Ferrero says: "Many of the peculiarities of born delinquents as the naso-labial and zygomatic wrinkles, tapering fingers, anomalies in the bones, hair, ears and eyes and the unusual expansion of the masticatory system may be explained by the arrested development of the foetus in the fifth or the sixth month of the ante-natal period."[1] Even the few atavistic traits found in the organism can hardly be associated with inborn tendencies to commit crime unless they indicate pathological changes in the organism. Crime is a social phenomenon varying in extent and nature from time to time and hence it cannot be the result of mere hereditary transmission, since social adaptations cannot be passed on by dint of heredity. Further a comparison of the social customs and institutions

1 Gina Ferrero's Criminal Man, p. 71.

of savages with those of modern societies little enlightens us on the nature of organic development. It cannot be asserted that with all the savage tribes crime is the rule and not the exception. Lombroso himself instances the Yuris of America as the people who have the greatest respect for the rights of property belonging to others. Lewis H. Morgan, A. R. Wallace, Herbert Spencer and others testify to the good tendencies of many a savage community in various parts of the world. To cite an instance Wallace refers to the primitive tribes of South America in these words: "I have lived with communities of savages in South America and the East who have no laws, or law courts, but among whom the public opinion of the village is freely expressed. Each man scrupulously respects the rights of his fellows and an infraction of his rights rarely or never takes place. All incentives to great crimes are wanting and petty ones are repressed partly by the influence of public opinion but chiefly by that natural sense of justice and respect for the neighbours' right which is in some degree inherent in every race of man." Among most of the savages we see that theft within the fold is punished but it is applauded if it be of the enemy's goods. This only signifies the encouragement on economic grounds of raids on alien territory which are a matter of our daily experience even among the civilised societies at war with one another.

The savage tribes shape their conduct in accordance with their social conditions just as much as the civilised nations of to-day, in the light of what they know. No special perversity independent of ignorance can be laid to their charge. Sometimes the conduct of civilised people may be worse. Did not these mow down savages with machine guns and did not negro slavery last up to yesterday? Social traditions should not therefore be confounded with traits which organic heredity may transmit.

For a similar reason the position that the primitive ancestors of modern civilised nations led a savage life is quite meaningless. If crime is anti-social conduct and if it was normal in ancient societies how could they have lasted and lived and still more developed into what they are now. It may be that what is anti-social now was not so then. Our ancestors had recourse to murder and theft only under stress of circumstances. If it is alleged that feelings of horror and bloodshed were not experienced in ancient societies the same thing holds true with the soldiers and able surgeons of modern times. The assertion that infanticide was sanctioned by religion arises from ignorance of its true cause which is economic. The profession of the thief is as recognised in old times as it is to-day. Polyandry was often an economic measure. If children sacrifices were common in the past, the

tortures of vivisection are quite modern. The loftiness of our ideals depends upon enlightenment rather than on any superior moral sense. If slavery was considered a necessary condition of civilised life among the Greeks and the Romans, the slaves of those days were in a better position than the free labourers of to-day who swell the ranks of the unemployed. Prostitution ascribed to Lydians as an atavistic trait is as rife to-day as of yore. For these reasons it is clear that the atavistic theory as applied to the criminals of civilised society of to-day is based on an incorrect appreciation of facts. Lastly, being a product of individual and social factors crime cannot merely be the expression of an organic tendency in reversion from a distant ancestor.

Lombroso traces the criminal instinct in animal and plant life. But although the equivalent of it is discernible in animal societies his identification of insectivorous plants as criminals in Nature is uncritical since an act characteristic of the whole species cannot be regarded as abnormal. This only indicates the continuity of man and animals for the explanation of which no resort to atavism is necessary. The biological theory of Recapitulation that the race development is repeated in the history of the individual should be modified by a consideration of differences between both, which are best brought to light by Professor Baldwin in his ' Mental Development.'

The net result of Lombrosian researches is that attention has been drawn to the organic sources of criminality as indicated by physical anomalies and psychic peculiarities of delinquents and the principle has been established that the criminal rather than the crime should be the object of investigation necessary for social defence on a right basis. As one great writer put it 'the genuine kernel of his doctrine will long outlive the achievements of many of his sharpest opponents.' Lombroso had several followers in various countries. Hans Kurella is a German adherent of his. In England Dr. Havelock Ellis holds the view that arrested development is an atavistic characteristic and that physical atavism throws the 'individval into a remote stratum of society and renders him unadaptable to his present environment, so that his new surroundings will themselves stimulate the effects of atavism and exaggerate its significance.' With Colajanni of Sicily, as with Garofalo, atavism limited itself to the psychic element. In view of the fact that the psychical retrograde is found in all forms of society with countless variations in characteristics, the theory of psychic atavism has no biological value. This underwent a refinement in the hands of Guglielmo Ferrero. He selected three psychological traits common to the savage and the criminal, *viz.*, inertia, a ready impulse to do what one intends without forethought or self-control and physio-psychic excitability.

These factors make the criminal unadaptable to the regularity of civilised habits, while they are not unfavourable to the requirements of irregular savage life. The connecting link between the savage and the criminal is thus said to be atavistic and this view is called the theory of atavism through equivalents. It may better be called the theory of psychological equivalents which have little to do with biological reversion. This reduces atavistic elements to a minimum.

Atavistic traits make their appearance under pathological and degenerate conditions. Degeneracy has obtained such a wide meaning as to indicate all kinds of unhealthy conditions of the organism. Aschaffenburg says, 'Most serious of all is the fact that we are unable to exactly define what must be recognised as a mark of degeneration.' It must always be determined in relation to time, place, age and sex with allowance for marginal variations from the average. Only those anomalies which are rare among normals and which create functional disturbances and render the constitution less capable of resistance should be regarded as marks of degeneration, and they are generally abundant among insanes and defectives. Whatever is ethnically conditioned cannot be regarded as degenerative.

If atavism is a reproduction of a distant type in the past, degeneracy points to arrested development, and indicates involution or decomposition of

the organism. While atavism pre-supposes progress of the race, degeneration marks the evolution by atrophy of the species. The author of 'Insanity in India' states that the stigmata of degeneration are common to insanes, idiots, imbeciles, epileptics, hysterics, neurotics, prostitutes, paupers, criminals, deaf mutes and those who are born blind. Hence they really signify the reverse of progress. If progress means development and strength, degeneracy means deterioration and weakness.

About 1857 the theory of degeneracy was first started by Morel in his treatise called 'Physical, Intellectual and Moral degeneration of the species.' He regarded it as the going astray of the primitive type which contained in itself all the elements necessary for the preservation of the species, and connected with the condition of man 'after his original fall.' Despine expressed a similar view in his 'Natural Psychology of Criminals,' and anticipated Garofalo in many respects. Now the term 'degenerate' signifies a constitutional inferior who is not able to realise the biological conditions of the struggle for existence. Physical decay influences mental processes and the latter shape and mould one's conduct. Degeneracy may be active or passive and dangerous or otherwise. Passive imbeciles do evil only by omission and it is the active dangerous degenerate who should be dreaded as

violent offenders. As Dallemagne says, 'Degeneration and criminality are two distinct ideas conceived and defined in very different ways.'

A host of writers trace degeneracy to the debility of the nervous system. As the physical basis of the mind is neural, congenital criminality is traced to neurotic conditions. Benedict assigns crime to a native nervous psychic debility which produces exhaustion in all work and creates thirst for low pleasures. Marro traces it to a defect of nutrition of the central nervous system. Bonfigly locates the disturbance in inhibitory centres. Kovalewsky assigns the same source to crime and explains the phenomenon as due to the antagonism between the cortical layer and the subcortical nuclei, the activity of the latter dominating that of the former in pathological conditions. All these theories are attempts to find a single root of crime and must therefore fail to afford sufficient explanation of the manifold aspects of criminalism.

Marro accounts for the constitutional weakness of the criminal. Bonfigly accounts for lack of self-control. Kovalewsky traces the nervous condition to pathological sources. Benedict's theory of Neurasthenia represents a morbid condition of the organism, especially accounting for a few sexual crimes.

Again, Marro's theory savours of degeneracy. Bonfigly explains the basis of the mental trait

that leads to crime, while Kovalewsky gives the physiological explanation of the lack of self-control. In short all of them draw attention to the pathological sources of criminality.

For an understanding of these theories a brief study of the nature aud function of the brain may be necessary. The cerebrum is the centre of consciousness and without the hemispheres thereof psychic action other than the reflex is not possible; nor can reflexes be controlled. The grey sheet of matter covering the cerebrum all round is the seat of the inhibitory centres. It is also the highest expression of the nervous organ for individual adaptation; it is myriad-folded and contains the nerve cells, possessing a pyramidal shape, called perikarya. The fibres passing to the pyramidal cell enter through the apex and four corners of it and do not transgress the limits of the grey cortex. From the base or about its centre arises one axone fibre which carries impulses away from the perikarya. The apices of the cortical cells turn towards the free surface of the layer. The axone fibre passing from some of the cells run into the subjacent white matter and mingling with other fibres go back to the grey matter of the cortex of the same or the opposite hemisphere or to the grey matter of the pons or that of the bulb of the spinal cord. The olfactory, auditory, the visual and the motor or precentral regions of the cortex

are connected with each sense organ by a net work of afferent nerves just like the reflex centres at the base of the brain or the spinal cord; but their re-actions are more variable and complex than those of the latter. Sense impressions are carried to the nerve centres in the cerebellum, medulla and the spinal cord through the system of afferent nerves. Motor activity is only a form of reaction through impulses directed along the system of efferent nerves to those of the muscles. 'The strength of the intellect depends on the acuteness of the sense organs, the efficiency of the sensory nerve fibres and the number and quality of the association centres in the cerebrum which are inherited.' The reflex movements of the sense organs generated by subcortical nuclei are controlled by the corresponding regions in the cortex. But if owing to pathological conditions the controlling force of the cortical region becomes effete the sensori-motor activity remains unchecked and it may result in a perverse course of conduct. This is what Kovalewsky explains by the adoption of Meynart's law on the subject.

Neurasthenia is a term used for the general weakness of the nervous system. It may give one uneasiness in so many ways; it may cause a transitory clouding of consciousness or lapse of memory for recent events. Blurring of vision, ringing in the years, localised coldness and scattered analgesia are other effects of this nervous

malady. These can scarcely be the direct cause of criminality. If neurasthenia is characterised by a morbid psychic condition, it is called psych-asthenia. The primary emotion of fear is excited in a violent and disordered fashion by severe nervous shocks due to injuries and the like. Patients suffering from such morbid horrors are called neurotics. Agoraphobia (fear of open space), Claustrophobia (fear of closed rooms) and Anthropophobia (fear of society) are some of the instances. One form of psychasthenia is what is called the 'railway spine', due to shocks from injuries in railways. Technically it is called siderodromophobia. What is more important than others is traumatic neurasthenia in which the injury is light but the shock so affects the nerves that although the patient may resume work, symptoms develop later which stimulate serious organic diseases. Hurt to the brain often creates serious psychotic conditions. In all forms of neurasthenia the subjective symptoms may be numerous and varying while the objective signs are very few and slight.

Disturbances or diseases of the nervous system may be organic or functional. In the former case symptoms of ailment during life can be traced to recognisable changes observed after death; in the latter the structural alteration may be so minute and microscopic that it is not easily detected.

The nuclei of nerve cells (or nervous units) or their supporting tissue may become diseased. They are said to be internally affected if they have *inherited* any pre-disposition to a disease. This diathesis is called a neuropathic or psychopathic taint. One of the serious consequence of neuropathic heredity is the engendering of imbecility or epilepsy or paralysis in the infant by reason of the germinal plasma of the parent being vitally affected. Amentia or feeble-mindedness is the result of diminution of vitality of certain parts of the germ plasma which determine the development of the nervous system. Germinal vitality is diminished by malnutrition, alcoholism nerve-poisoning, tuberculosis, etc. If there is no recuperation, it causes a variation of the germ cell and gives rise to a neuropathic diathesis, and prevents certain parts of the cell from developing to their full extent. Insanity apart from amentia is due to the general weakness of the brain. It is sometimes the result of malnutrition in early life, or brain tumours orlesions caused by accidents. These may in the long run occasion a derangement of the mental faculties. Dementia is the result of degeneration which affects a fully developed brain. Differences in the quality of hereditary factors determine whether amentia or dementia shall be the result. If environmental influences cause a degeneration of nerve cells of the brain, then it results in dementia but the inheritance of a diathesis is the root of congenital

insanity. If the highest regions of the brain be affected permanently, insanity is said to be a major psychosis. If its lower levels be disordered it gives rise to temporary psychoses. In these cases the patients are semi-responsibles. Insanity springs from a thousand causes and takes a thousand forms; it is so hidden sometimes that the patient is by mistake accounted criminalistic.

Neurones are affected externally by abnormal conditions like the poisoning of the blood and the lymph, deficiency of blood supply, excess of certain normal constituents and the presence of a few abnormal elements produced within the body, injury or disease of the supporting tissue and excess or defect of normal stimulation.[1] Of these conditions those which influence mental processes so as to produce aberrations may be said to induce criminality in a direct manner; other diseases contribute to it only indirectly.

We may conclude this lecture with noting the criminal possibilities of a few forms of psychotic conditions. Dementia precox is a variety of major psychosis. Its symptoms first appear in adolescence; early signs of it are mainly extreme shyness and fear. It chiefly attacks males. 'The young patient does not go of doors, shuns company and avoids seeking a job; excessive self-abuse is also a characteristic; the idea of suicide is entertained and evil

1. Encyclopædia, Brittannica, Vol 19, p. 429.

suggestion leads the patient into petty delinquencies.'[1] Its diagnosis at an early age is difficult owing to its slow evolution. In ordinary observation it is very much neglected. Running away and stealing are the chief faults resulting from this disease.

Paresis is a result of the syphilis of the brain. It causes profound disturbances in emotional life; it subjects the patient sometimes to hallucination and goes undetected in several cases. 'Petty thieving even by rich men, the public use of shameful language, indecencies of court, engaging in orgies of dissipation'[2] are some of the offences. Sometimes delinquency begins with embarking in speculation and running through one's fortunes. Juvenile paresis makes people incorrigible even under the kindest of influences.

Melancholiacs feel a morbid impulse to put an end to things; thus their crimes are murder, arson and the like; they are prone sometimes to suicide.

As a result of psychomotor activity followed by abnormal depression, 'manic-depressive insanity leads to quarrelling, fighting, running away, unprovoked assault and the like.'[3] A lady suffering from the malady is said to talk continuously for hours at one time and not to utter even a

1. Dr. Healy, p. 593. 2. Ibid, p. 601.
3. Ibid, p. 602.

word for several days on another occasion. It also leads to pathological stealing. Hypomania represents abnormal excitement and leads to sex delinquencies, excessive fabrication, stealing and misrepresentation. Wanderlust is a feature in certain cases.

In some instances of chorea there is seen a psychosis which favours mendacity, false accusation, petty stealing and development of sexual aberrations. Where traumatic insanity results from cranial trauma or cerebral injury there will be no severe mental damage at the time of the accident except a transitory loss of memory at times. Changes in behaviour develop in course of time, the effects of which will be seen in instability of disposition, irascibility, mental exhaustion, intolerance of alcohol and the like. These may be enhanced by work in overheated places and other variations in environmental stress.

Hysteria is a disease difficult for laymen to understand. Its symptoms are complex ranging from convulsions and periodic blindness to the benumming of the hand or arm. Hysterical delinquents are threateners rather than doers. It mainly attacks females. Its presence is sometimes concealed. False accusation of indecent behaviour, obtaining money by false pretences, obscenity, continuous quarrels, slander and passive sex offences are marked delinquencies

incidental to this disease.[1] Hysteria is the result of neurotic, epileptic or alcoholic heredity or traumatic or toxic influence. Its psychic characteristics are little power of concentration, egoism, suggestibility and extravagant actions aiming at personal notoriety. Hysterical women are said not to perform acts contrary to their nature. Psychic hysteria without physical symptoms is most dangerous to society. Women suffering from it invent slanders especially of an erotic nature. Such persons are keenly susceptible to hypnotic influence. They may be hypnotised into believing themselves to be and acting as members of the opposite sex; they are very sensitive to remarks and cling to fixed ideas. They utter senseless falsehoods just for the pleasure of deceiving. This malady is regarded as a milder form of epilepsy. It is often preceded by hallucinations or sudden change of character. It is attended with anæsthesia and pain in some fixed spot, as the head or nape of the neck. The foundation of hysteria is said to be erotic.

A special form of congenital idiocy prevalent in marshy and hilly tracts is what is called cretinism due to the enlargement of the thyroid gland. It is sometimes hereditary. It interferes with the development of the skull. This is found in the sub-Himalayan tracts of India. The whole body is said to be structurally

1. Dr. Healy, p. 648.

altered in certain goitrous districts. Among cretines offences against person are rarer but more virulent. Pellagra is a loathsome skin disease due to the consumption of spoiled maize; it disposes the patient to murder or suicide; the sight of water suggests drowning.

Lastly we may turn our attention to the theory of epilepsy. To laymen epilepsy represents a nervous malady manifesting itself in repeated 'tonic and clonic fits' and accompanied by loss of consciousness. As to what really constitutes the disease medical science is yet to say its last word. Lombroso in the light of his later researches attributed an epileptic basis to all forms of instinctive delinquency. There are various forms of this disease. In what is called grand mal or major epilepsy the patient loses his motor co-ordination and becomes unconscious. In some cases the convulsion is so slight that there is no fall but the patient feels suddenly unable to move and his consciousness is dimmed only for a few seconds. Sometimes in place of the convulsive fit it exhibits itself in the form of vertigo, neuralgia, sudden sweats and such like physical phenomena. Convulsions and fits occurring in infants along with other diseases are not regarded as epileptic. What struck Lombroso and others of his school as indicative of the epileptic origin of congenital criminality was that the seizure is in some cases replaced only by fits of rage and

ferocious actions not accompanied with loss of consciousness. This led to the inference that delinquency may be a form of epilepsy attenuated or masked so far as motor attacks are concerned but aggravated by criminal impulses. Lombroso was confirmed in his view by the presence of similar anomalies, anatomical, psychological and moral in epileptics and born criminals. He says that none of the atavistic phenomena shown by criminals is lacking in epilepsy. What distinguishes criminal epilepsy from the ordinary form of it is the desire for doing evil for evil's sake. In his view it is the epileptic background that explains the 'instantaneous periodicity and paradoxical character' of the symptoms evinced by born criminals and moral lunatics.

Epilepsy is said to be due to a rapid and abnormal explosion of the grey matter of the cortex. By subjecting the cerebral zones to the influence of a graduated electric current Rosenbach showed that the whole series of epileptic effects from the mildest to the most serious manifestations of the disease might be produced.[1] Lombroso conceived of mental explosions as being weakened and spread over the whole constitution of a criminal and he finds in this the explanation for the existence of antithetical qualities in him such as kindness and fierceness, cowardice and recklessness, genius and stupidity. Roncoroni

1. Lombroso's Criminal Man, p. 59.

made a comparison of the histological anomalies common to born criminals and epileptics and found them in the same proportion in both the classes of persons. The anomalies he noted were

(1) "atrophy of the deep granular layer,

(2) the inversion of the pyramidal layers on small cells;

(3) the enlargement and rarefaction of the pyramidal cells;

(4) the existence of nervous cells in the white substance."

Ottolenghi examined the field of vision both of born criminals and epileptics and discovered a common marked anomaly consisting of "peripheral scotoma, not found among the savages, intersecting the nearly uniform line of varying size common to normal eyes."

The epileptic theory confuses the line between crime and disease. Aschaffenburg declares that the criminal never shows epileptic characteristics unless he is suffering from the malady. As Dr. Healy says, there are too many sides to the problem of criminalism to have it met in this one-pointed fashion. Epilepsy is a neurotic disease while criminality is psychic in character. Certain psychic characteristics of it are noteworthy in connexion with criminalism; instability of disposition is its marked feature. Gina Ferrero gives an example of an epileptic who

fancied himself to be Napolean at one time and at another time would lick the ground like the humblest slave.[1] Suggestibility is another mark of it. A young epileptic offender was at times the victim of others who led him on; he was persuaded to go to a house of prostitution; accordingly he went and acquired a venereal disease. He apparently remembered his action but could not give the slightest motive to it. He felt that his act was the result of a sudden impulse; he could not stick at any employment for any long time; he enlisted in the navy but a year after, he deserted it for no known cause and had to be tried by a court-martial.

Precocious development is observed in certain cases. A boy had epileptic attacks till his tenth year, and then they entirely ceased. But at that period his voice began to change and he developed a slight moustache. Till then he was very dull but afterwards began to improve. The career of his delinquency began at eleven and before he was sixteen, he left a notoriously bad record for stealing and truancy. Later on he grew more stable and steady in his behaviour.

Another epileptic murderer examined by Dr. Healy furnishes a very instructive instance. He was not recognised as such by the Court which condemned him. He had no excitement or contrition; his trembling and sweating at intervals

1. Gina Ferrero Lombroso's Criminal Man, p. 62.

could not be counted as evidence of emotion. He was abnormally passionate. He had occasional frontal headache with a feeling of sickness at times. His mother was subject to epilepsy; migraine was his family complaint. This man had attacks of the disease when he was a boy and used to run away from home and stay out for two or three days. During early adolescence he became a thief. He was married at eighteen and was a satisfactory husband to his wife...Although he had no fits for years he would experience something affecting his brain occasionally twice or thrice a day when he would get weak, sit down and feel everything in front of him quite dark. He admitted that he was very changeable in his feelings. He was accused of having murdered an old woman. He could not recall just the day on which the murder occurred; it was just an impulse that came over him. When he was questioned he said he thought he was perhaps angry with the victim because she had ordered him out of the house. There was hardly any motive for the offence. He was not particularly hard up for money. He experienced sex feelings at the time but he knew he felt very strange at the moment. He did not remember having cut her nor did he feel afraid of the matter. He had already perpetrated at least one murder; still his psychic condition went unexamined. His murderous act was done in a state of unconsciousness which supervened at times in place of the epileptic attack. Although

he said that he would not have committed the murder had he not been previously drinking, he certainly did not get drunk on that day. (Dr. Healy's Case 78.)

What may be regarded as a dangerous factor of criminality is psychic epilepsy. The disease consists in slow continual brain irritation. During the attack the patient loses his consciousness wholly or in part. Variability is a striking characteristic. The sufferer is at one time mute and immoveable, and at another time talks incessantly. Although he pursues his ordinary avocations he sometimes suffers a change of personality when his habits, action and even handwriting assume a different character. Gina Ferrero instances a case in which an epileptic travelled on foot from Paris to Bombay. Thus the attack may last for months; the journeys are undertaken in a state of unconsciousness and a little while before the happening of the fit. Once during one of the attacks a patient was arrested as a deserter and he was unable to explain his conduct. Psychic epilepsy passes unnoticed owing to its simulation of lucidity and health. It is most dangerous if during apparent clearness of mind the seizure is attended with insatiable thirst for blood. Lombroso's persistence in the epileptic theory was due to his observation of a young soldier called Misdea who while serving in the army suddenly attacked and killed his superior

officer and eight or ten soldiers who tried to subdue him. Then he fell into a slumber and when he woke up he remembered nothing of what he had done. This is what is called epilepsie larvée, since violence appears in place of the fit. Gina Ferrero tells us of a strange case in which there was a change of personality with no loss of consciousness. A servant who had been faithful for forty years suddenly murdered his old mistress one night. He took precautions to cut all the bell wires in order to prevent communication with other servants. Then he ran away with a jewel of hers. A few days after he returned and gave himself up to the police. Snbsequently in one of the fits he died.[1] This illustrates the existence of multiple personalities in men.

Another dangerous condition is the association of epilepsy with insanity. In such a case insanity precedes the fit for hours or days and ends with it. Unconsciousness follows the fit during which acts done are lunatic in character. They are mere caricatures of normal deeds. For instance, a clerk suffering from post epileptic automatism will take anything resembling a pen and write and write and write leaving no mark of intelligence on paper. The patient sometimes undresses and makes water in inappropriate places. This is what is called

1. Gina Ferrero, p. 91.

'Petit Mal'. A lady suffering from this psychosis while cutting bread and butter for the children's tea cut her own arms with it, while another patient cut her child's arm.

What remains to be noted is the question of paralysis. Hemiplegia is paralysis of one part of the body indicating insanity if there is a severance of nerve fibres from the highest regions of the brain. It is most pronounced at the extremities. It may also rise as a result of the rupture of a blood vessel in the brain in old age. Sometimes speech is affected and the patient expresses himself in words foreign to his meaning, but that is not an indication of insanity. The disease may create mental defect and produce feeble-mindedness. In general paralysis of the insane there is a failure of the power of the nerve centres including that of the motor ones. It attacks men more than women. Deficient sensibility and a peculiar irregularity of the pupils of the eye are some of its recognised characteristics. Offences due to it are distinguished by brutish violence, sexual impropriety and theft. It is rare in this country owing to the least prevalence of alcoholic habits.

The effects of physical shortcomings are mainly indirect. For instance the eye strain may lead to head-ache and induce a sense of bodily discomfort. It often causes irritability and discontent. The deaf man is peculiarly recalcitrant.

A sort of ringing in the ear is often an irritative influence. Stuttering is well-known to induce anti-social attitudes. An accurate analysis of all the pathological conditions that have any connexion with criminality will fill the space of a single volume by itself.

A NOTE:—THE BRAIN.

For measuring intelligence there is no good depending on the size and weight of the brain. An idiot is said to have a brain weighing more than 2,000 grams, while about 1,380 grams is regarded as the weight of the normal brain. 'The countless cells of the cortical matter are the final seat of the intellectual energy.' The development of the cellular tissue goes on until arrested by the closure of the cranial sutures, which in the idiot takes place early in life. The longer the process is delayed the more is the brain exercised. This casts light on the connexion between cerebral and mental expansion. It would therefore seem probable that "intense cerebration acts almost mechanically on the brain cap tending by its throbbing to keep the sutures free till late in life, and evenly causing an expansion of the cranium itself in energetic and highly intelligent races."[1] The number of cells in the cortex and of cerebral sinuosities is to be taken into account in judging the intellectual growth of an individual. There

1. Keane's Ethnology, p. 44, 45.

is little direct correspondence between the intelligence and the body at large.

The study of the human brain in the light of the new spiritual science opens a vista into the wonderful facts of its nature. The French Professor Emile Boirac has published his researches in this field in his book 'The Psychology of the Future.' He says that it is a mistake to suppose that the brain is contained only in the cranium. The brain is perpetually mixed and confounded with the world, through a subtle and constant exchange of secret activities. Its activity spreads into space. That which separates the brain from the surrounding world is the opacity of our organism. When this opacity is removed, the brain may leave the cerebral focus and enlarge its sphere of action indefinitely. Then it will enable the self 'to exert an action on ordinary matter without having recourse, at least consciously, to the intermediary of the organism which will act, not as an active instrument, but as a passive conductor.'[1] If this abnormal 'self' be fused with normal 'self' by the constant regulated practice of higher forms of yoga, the world itself may become the organism of the soul. Habit and heredity in this line will lead to the creation of a new humanity which may reduce to a minimum the evils of human finitude and make crime a rare anomaly.

1. Boirac, Psychology of the Future, p. 311, 312.

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LECTURE III

INSTRUMENTAL AND OCCASIONAL CAUSES.

PART I—A. ORGANIC SIDE.

In the last lecture we traced the criminal act to its psychic source, and the latter to its physical basis in the organism. Now in dealing with the human organism we have to attribute its appearance and qualities to its place in racial development. The great ethnologist Keane asserts himself in favour of the fundamental unity of the human race in these words 'All types of men from the blackest to the whitest, the most savage to the most civilised have such general likeness in the structure of their bodies, and the working of their mind as is easiest and best accounted for by their being descended from a common ancestry. The various races are capable of freely inter-marrying and forming crossed races of every description and we are unacquainted with a single tribe from a single bone of which we might with certainty discern to what racial group it belongs.'[1] Similarly the better opinion about the origin of races is that the human race sprang from a single cradle land about the equatorial regions from which other parts of the earth have been peopled by

1. Keane's Ethnology, p. 155, 156.

endless migrations in the pleistocene and subsequent ages of the earth; and what are called races are simply different groups of mankind that peopled the various parts of the earth and developed into distinct ethnic types by virtue of slow adaptation to special surroundings and inherited tendencies. 'Races are what climate, soil, diet, natural selection, heredity and time have made them.' Briefly put, racial development depends on heredity and environment. The physical frame being the instrument of the human mind, the forces that operate to evolve the human organism may be termed instrumental causes. What serves to combine the external and internal factors of crime and present the opportunity for the production thereof may be called occasional causes. The former group of causes first deserves our attention.

Some of the ethnologists infer the existence of two racial types in paleolithic times. We have to refer to this because the characteristics they attribute to the earlier of the two bear a striking resemblance to certain features of the born criminal as given by Lombroso. The earlier form totally different from every form now living was distinguished by a "low receding forehead, inflated circumnasal regions, enormous jaws, a shallow zigmoid notch, overhanging brow ridges forming continuous horizontal bars of bone overlooking the orbit, a low stature within five

inches and a low type of brain with its cranial capacity estimated at over 1600 cubic centimeters."[1] The later and better type though of the same stature has a vastly different skull and structure, with a vertical forehead and a less massive jaw and there is a comparative absence of simian characteristics.

In neolithic and later ages the branches of mankind peopled the diverse continents and countries of the world and developed definite types characteristic of the regions where they settled. The characteristics of the type make up a permanent variety peculiar to the region and suffer very slow changes in the course of centuries. However the continuous accretion of fresh elements would not fail to ultimately bring about great modifications of earlier types whose general uniformity would be preserved by the ever active principle of convergence. At the present day it is hard to find unmixed races. Professor Keane says, "Permanent miscegenation has been well-established for the pre-historic population of Europe." Throughout the historic period the same phenomenon is everywhere present to such an extent that amongst the present inhabitants of the globe the rule is mixture and the exception, racial purity. For instance, the England of pre-historic times was originally inhabited by a long-headed type

1. Man Past and Present, p. 9.

and round heads came in with the metal age. Subsequently the two types gradually merged in a mixed population and with superadded elements have persisted to the present day. After the dawn of history, the English people got a large accretion of Norman Celtic, and Briton elements to the bulk of the original Anglo-Saxon, which was itself mixed in character. In Canada the French element persists only by dint of its earliest alliance with the surrounding Algonquian tribes of the country. Similarly in other parts of America like Mexico, the Indians have mixed up with whites and negroes. In Africa, the inhabitants of Griqua land are Hottentot-Dutch half breeds; in the Arctic region there is the Dane-Eskimo half-breed; in Kashmir the Baltis represent an excellent mixture of Aryan and Mongol breed. Although the great divisions of mankind have thus undergone and are undergoing great changes, yet they maintain their distinct regional character. In modern times race must be said to represent a community of individuals having common transmissible feature or 'permanent varieties' as they are called. Out of the commingling of various races a type is formed and this may in turn lead to the formation of a new racial type by super-addition of alien elements.

Racial differences are inferred from differences in colour, expression, language, hair, cephalic index, temperament and other respects.

Of these colour is not a satisfactory test being subject to fluctuations due to the number and hue of the pigments in the lower layer of the skin. History has established that language too is hardly a reliable test. But the character of the hair has been adopted as the most satisfactory and unchangeable basis for the widest classification of races. All the human groups are now divided into three classes according as they are wholly haired, straight haired and wavy haired. These three roughly represent the Negro, the West Indian and the Mongol, and the Caucasian types.[1] Cephalic index is unaffected by climate and surroundings although it is influenced by miscegenation which causes a tendency to revert to the original.

For our purposes what is important is the general temperament of the various races. Temperament represents the state of mind that results from the habitual influence of bodily states. We cannot be certain of the accuracy of the qualities vaguely attributed to the various races, although they may present an average scale. The wholly-haired African Negro reminds us of several characteristics of Lombroso's born criminal. Like the latter the African is fitful, cruel, sensuous, indolent, improvident and lacking in self-respect. Physically he is marked by prognathism and disproportionately long arms.

1. Man Past and Present, p. 38, 39.

But Bushmen a negro variety of African tribes have a bright record. They are credited with untiring energy, devoted loyalty and family affection, and they are said to be intelligent and refined in manners.[1] According to one writer they teach us 'how far the fine excellences of life may be attained even in the hunting stage.' The Oceanic Negroes are said to be more cruel than the African; among them head-hunting expeditions are more numerous. To kill as many as one can and gather the heads of the victims is regarded as a test of courage and strength; the heads are trophies sometimes entitling young men to the hand of a bride. Tribes of these people inhabit Malaya and the Eastern Archipelago. The inhabitants of the Andamans who are a variety of Oceanic Negroes have frizzly hair growing in spiral tufts and present a cephalic index under eighty-two. Their character is a contrast to that of the average Oceanic Negro. They possess an excellent temperament being honest, frank, polite, modest and having respect for elders. Women are on an equal footing with men among them and are remarkable for their conjugal fidelity. At the same time the tribe of Jarwaras is the most ferocious and irreconcilable of the races resident in the Andaman Isles.

With reference to racial mixture in India Sir William Turner says that he knows no direct

[1] Man Past and Present, p. 131.

evidence of either a past or present Negrito population in this country. But it is undoubted that there are traces of Mongolian mingling in the north-eastern part of this country, especially in Nepal and in the Gangetic plains. A great part of the eastern hemisphere was peopled by offshoots from an original nucleus of the Mongolian tribe on the Tibetan tableland. The Mongols are good-natured and have a genial temperament but they are by nature indolent and have a low moral standing. The Oceanic branch is reserved in habits but cruel, treacherous and excitable and represents the worst of the Mongol stock. The Tibetan Mongols stand in the midway between the Oceanic and the Northern. The Northern Mongols like the Japanese have developed a higher ethical power along with active and warlike habits. Of them the Turks are a momentous branch, whose cradle is the Altai range. They entered our country through Persia and the north-western passes. They represent a fierce and warlike type capable of great atrocities. In the east the Mongolian type of Assam and Burma is noted for its social, placid and straightforward temperament. The Burmese though indolent are hospitable and kind. In no other part of the world do women enjoy such a large measure of freedom. It may be noted in passing that among the Burmese tatooing is cultivated as an art—art which Lombroso attributes to the crimin

In India recent investigations reveal the presence of a pre-Dravidian element represented by the Kurumbars and the Kadirs of the Anamalai Hills in the Madras Presidency and the Veddas of Ceylon, etc.; Australians are said to be of the same variety. The Veddas of Ceylon are upright, hospitable and have a strong love of liberty and what is wonderful, are strictly monogamous. Along with this element the Aryan and the Dravidian people are comprised in the group of the wavy-haired races styled Caucasian. The Caucasian type is characterised by a common facial stamp and bodily proportions. The term Aryan has hardly any place in Ethnology. If there had existed any Aryan stock it has been absorbed in remote pre-historic times in a number of other races. What is curiously interesting is that some Italian scholars set forth the theory that the true primitive Aryans were dark, round-headed, short, and were represented by the Celts, the Slavs and the South Germans. Whatever may be the truth of it, it appears probable that the Dravidian type represented the indigenous element from Ceylon to the Gangetic valley modified in various degrees by the admixture of Aryan, Scythian and Mongoloid elements. This element is dominant throughout Madras, Hyderabad, Central Provinces, Central India and Chota Nagpur. Miscegenation holds as true of this element as any other, although a few Dravidian and pre-Dravidian

tribes preserve their purity by virtue of their compact tribal organisation in hills and jungles. The Aryo-Dravidian type is found in the United Provinces, Rajaputana, Bihar and Ceylon. The Mahratta Brahmans, Kunbis, and Coorgis represent the Scythio-Dravidian stuff. The Indo-Aryan type is found in the Punjab, Kashmir and Rajaputana and the Turko-Iranian is represented by the Baluchis, Brahuis and Afghans.[1] The race miscegenations are almost all pre-historic and the amalgamation of races has continued for ages; 'and any attempt to sort the existing races into a set of pigeon holes each representing a definite type of race is in the present state of our knowledge impossible.'

In India the racial type has been largely varied and superseded by that of caste. Caste is an elaborate classification of society based on subtle distinctions of food, drink, dress, marriage and ceremonial usage. It has undergone endless modifications. The time-honoured fourfold division of caste neither accords with the existing facts nor corresponds to distinct ethnic groups. For instance the racial composition of Brahmans differs in various provinces and the ancient designation Sudra represents no group definitely. Caste has had an immense influence on all classes of people that settled in India. It has affected even Christianity and Islam. Even a portion of

1. Risley, People of India, p. 48-56.

the Brahmo community appears according to Sir Henry Cotton to be in the course of passing into a new caste. The formation of caste in manifold ways has been analytically studied by Sir Herbert Risley. Suffice it here to state that the limits of a caste are marked mainly by the scope of endogamous marriage. Owing to the forbidding of intercaste marriages differences of physical type may be expected to manifest a high degree of persistence. The status of a caste depends on its occupation and its habits of diet.

In order to understand the mental status of the various tribes and castes in India their habits of life should be carefully observed. Whether it be the result of heredity or environment, the differences in their characteristics may for practical purposes be regarded as racial. The savage tribes like Santhals and Khonds of Orissa till recently offered human sacrifices for the Earth Goddess. The Afghan tribes of the Frontier are notorious for their customary blood-feuds. Born in a hot and barren country they are turbulent in nature; they cannot but be unstable in temper and violently active in their career. The Mongoloid Khels in Chittagong fortify their locality and indulge in raids for the capturing of wives. In Baluchistan the Afghans have the custom of selling girls to the highest bidder whatever may be their social status.

As regards castes, their characteristics are sometimes peculiar to their occupations, and pass current couched in various proverbs and sayings. Risley has collected a number of proverbs bringing out the defects of character pertaining to various castes. Proverbs are rooted in popular sentiment and they represent the experience of a particular people of a certain place and time and reflect the spirit of the age in which they were coined. Hence they are only half-truths. For instance, the priest is described as a holy man by appearance but as a butcher at heart. The money-lender is next condemned. There is a proverb that 'when four Baniâs meet they rob the world.'[1] 'Be the season good or bad, the Brahman cites scriptures for his purpose.' 'Drinking comes to Kayastha with his mother's milk.' The goldsmith is satirised as a cheat; the proverb is 'Trust not the goldsmith, his word is worthless.' The begging of the ascetic is rated worse than that of the Brahmans; 'promise a Brahman nothing but be more chary of your word to a mendicant.' The Jat is described as untidy and as practising fraternal polyandry for the sake of domestic economy. 'Among men the most deceitful is the barber and among birds the crow.' 'If you have never seen a thief look at a Sonar.' While the potter's honesty is not impeached, his intelligence is held up to ridicule.

1. Vide Risley's People of India, Chapter II, p. 129 to 135.

Some castes have developed such an exclusiveness in their mode of life that the slightest deviation from caste rules creates criminal provocation. The exclusive classes push their fortunes in the world by resorting to wiles and indulging in pompous pretensions, but when their own interests are at stake prove treacherous and callous to the interests and feelings of other castes. Some of the caste-ridden classes are wanting in adaptability; cherish a superstitiously high regard for their noble ancestry; have a false sense of personal dignity which disinclines them to work and are very sensitive and disobliging at the worst. Racial prejudices and caste differences have been a fertile source of criminality in this country.

The great difficulty about the significance of the race is the difficulty of separation of the racial influence from that of the environment. Lombroso shows the influence of race by selecting two African tribes living side by side, one fierce and living by hunting and the other leading a peaceful agricultural life. He also instances a class of thieves the Beni-Hassan[1] of Morocco who have specialised in theft as their business; they are divided into oat-thieves, horse-thieves, village thieves and high-waymen. In India the Kurumbars and Koravars present a similar contrast in character; the Turk, the Mongol and the

1. Lombroso, Crime and its Causes, p. 21.

Dravidian are each marked by his own special characteristics. The Turk is warlike, the Mongol soft-mannered and the Dravidian industrious. Professor Ferri has shown in his 'Homicide' that while the Latin element is inclined to homicide the Teuton kills himself. The inhabitants of Corsica and Sardinia have received a special study at the hands of Dr. Joly and other European writers. Dr. Joly holds the view that inasmuch as the Corsicans who are away from Corsica show a low degree of criminality the social milieu was the cause rather than the racial influence. But Aschaffenburg is of opinion that the custom of blood-feud as a longstanding one in the country bespeaks the racial tendency rather than social conditions. He traces their descent to the Sergi a most violent race among the ancients who left traces of settlement in the countries on the Mediterranean Coast.[1] In Sicily and Corsica criminality is alike in nature owing to the dominance of the same Saracen element in both.

Although two races living side by side exhibit marked differences in their characters, ignorance of their history keeps us in the dark as to the influence of social factors that have helped to mould their life in a particular manner. But it should be borne in mind that social customs themselves are to a certain extent expressions of racial

1. Aschaffenburg Crime and Repression, p. 38.

characteristics. Even if the example of a single person is followed by many and their observance grows into a custom, the element of race is none the less important in view of the fact that even in the pursuit of a model people may show different racial characteristics, and that at least the exemplar owes his conduct, ever so lightly it may be, to his special racial temperament. For instance, if thousand persons go without food and if three of them adjust themselves to the circumstance by following different modes of conduct, all the three will have their own bands of followers from the multitude and if the three bands with their leaders persist in their respective practices they lay the foundation of three races. One man might starve or strive, another would steal and the third would beg.

As regards cephalic index we can do little else than rely on the opinion of Lombroso as based on the statistics of France and Italy. Wherever dolicho-cephaly prevails crime is greater than where brachy-cephaly is the rule. But this is in conflict with the teaching of anthropology according to which criminals are ultra-brachy-cephalic. Lombroso reconciles this by declaring that the exaggerated brachy-cephaly of criminals is a plain mark of degeneracy. [1]

The question of the descent of racial characteristics leads us to the question of heredity.

1. Lombroso, Crime and its Causes, p. 34, 35.

Herbert Spencer said: 'Inherited constitution must ever be the chief factor in determining character.' If criminality is due to inherited defects the treatment of the criminal should suffer great changes. Dr. Münsterburg says, 'The unhealthy parents and not the immoral children are responsible,' and Thompson expresses the opinion that 'the biological ideal of evolving a healthful, self-sustaining human breed is as fundamental as the sociological ideal of a harmoniously interested society is supreme.'[1] Hence the importance of the subject.

By heredity is meant the genetic relation to forbears; its influence should be distinguished from that of external institutions and traditional culture. It is innate variations in the constitution that ought to be considered in relation to racial progress or degeneracy. What is inherited is the qualities inherent in the germ plasm that is the material of the germ cell. Human life has its origin in the union of the two germ cells. In the course of bodily development a residue of unaltered germinal material is kept apart to form the future reproductive cells. The fertilised ovum, *i.e.*, the ovum impregnated with the spermatazoon is cloven into two cells one of which is the ancestor of all the body cells and the other, that of all the germ cells. It is the germ plasm that bears all the inheritance and the germinal

1. Arthur Thomson Heredity, p.1515.

continuity of the race is at the base of all organic evolution. Two laws of inheritance need to be borne in mind in connexion with the transmission of hereditary qualities. These laws have been formulated as the result of experiments only in respect of the passing down of physical characteristics. They deserve our consideration for the reason that the inheritance of abnormal physical conditions may largely influence the manifestation of psychic tendencies. One is the law of average results formulated by Galton: 'Inheritance on an average is made up of a half from each of the parents, a quarter from the four grand-parents and an eighth from the great-grand-parents and so on.' The other law discovered and formulated by a Silesian Abbot George Mendel as early as 1865 was brought to light only in 1900, when three independent investigators had made similar discoveries. It is best inferred from illustrations. Mendel crossed varieties of peas with one another and discovered that when a tall form of pea growing about six feet in height was crossed with a dwarf type which rises only to eighteen inches, the hybrid plants were all remarkably enough as tall as the tall parent. Thus in the first generation of crossing, the tall type acted as a *dominant* repressing the dwarf altogether, the condition of the dwarf being styled *recessive*. When the tall variety produced its offspring by self-fertilisation; the second generation consisted of thrice as many

talls as there were dwarfs. When again the tall plants of the second generation were left to self-fertilise, the third generation consisted of two mixed lots to one pure lot.

In many cases there is only an incomplete dominance of one characteristic as when the crossing of a black and a white fowl produces blue ones. Where the cross between the two types is intermediate in form, the second hybrid generation shows 25 % pure like the one original parent and another 25 % like the other original parent and the rest 50 intermediate in character. Mendel's law indicates the possibility of the inheritance of 'unit characters,' which behave 'as if they were discrete units and which can be shuffled about and distributed to the offspring in some degree independently of each other.'[1] The contrasted characters of two parents do not blend in the offspring but one of them appears in its entirety. In the germ cells of crosses there is the segregation of two contrasted unit characters.

Herbert Spencer quotes an instance of a white woman who had first intercourse with a Negro and afterwards with a white man; the children born to the latter showed certain Negro peculiarities.

Dr. Arthur Thompson suggests that careful enquiry should be made as to the results of

1. Arthur Thomson's Heredity, p. 366, 372.

intermarriage among Eurasians to see if there could be a shifting out of pure Asiatics and pure Europeans.[1]

The objection that human evolution being psychic, Mendelian law may not apply to it, is met by reference to Professor Karl Pearson's lecture on 'Inheritance of mental and moral characters in man.' Professor Pearson obtained for upwards of thousand families of school-going children impartial data as to fraternal resemblance in physical and psychic characteristics, and as the result of his investigations he formulates the rule that psychical characters are inherited in the same way and at the same rate as the physical. However, the inheritance of mental elements is clear only in respect of such of them as have a physical basis for development. If, for instance, criminality has a pathological basis the transmission of pathological conditions may be productive of delinquent tendencies in children. In this connexion Lombroso's researches may be summarised. 'Each of the parents tends to transmit his or her own sex traits and the one that prevails is nearest to maturity. The mother is generally recessive while the father is progressive. Morbid heredity depends upon the sex of the parent and the intensity of the morbid condition. In the case of neuropathic parents the father transmits the disease to the son rather

1. Arthur Thomson's Heredity, p. 529.

than to the daughter, while phthisical parents reverse the relationship. Where the parent stock is unable to control the environment, heredity traits are less marked. Boys show a greater variability than girls.[1] As an instance of criminality resulting from degenerate inheritance, the geneology of the Juke's family as traced by Mr. Dugdale is most instructive. The original ancestor Max Juke was a hunter and drunkard. He was born about 1750. In the second generation from him no delinquent appeared but from the fourth to the fifth generation there was a rise in the number of delinquents, prostitutes and beggars and criminality was higher in the illegitimate than in the legitimate children. Then during the next two generations there was a diminution of delinquency. Mr. Dugdale counted two hundred thieves in Juke's posterity of four hundred and fifty legitimate and one hundred and sixty nine illegitimate children. The rule in this family of a chronic drunkard was found to be that if the eldest turned criminal his brother became insane and his sister a prostitute. Of the one hundred and four criminals whose heredity was examined by Lombroso, seventy-one showed hereditary influences, epileptic, alcoholic, insane, prostitutional and suicidal. Sichart's statistics show that alcoholic heredity favours thefts and sexual crimes more than other classes of offences ; while

1. Lombroso, Crime and its Causes, p. 173, 174.

Marro found 49 % of alcoholics among parents of homicides and 60 % among parents of those guilty of assault. A tolerably high percentage in thieving may sometimes be due to the use of certain drugs which induce an inclination to steal. All the writers agree that precocity is the first characteristic of alcoholic heredity, children thirsting for alochol even as early as four years of age and the worst of it being that the issue of alcoholics cannot withstand the effects of alcohol. Lombroso gives the instance of one who became delirious by indulgence in alcohol for a couple of days while his father had been a drinker for seven years without his brains being affected.

Marro by investigating the age of parents of nearly one thousand school-going children at the time of birth of their criminal sons found that thieves had young parents while homicides had elderly ones. It appears that young and old parents gave birth to a greater number of criminals guilty of assault than parents of a middle age. Children born of a mother in her involutional period happen to be defective. As regards mental defect due to bad heredity, an examination of three hundred children in the Home for neglected children in the city of Berlin as stated by Aschaffenburg showed that only seventy-three were reasonably intelligent; sixty-eight were feeble-minded and one hundred and thirty four were guilty of some offence or other.

The question of direct heredity of criminality is explained mostly by evil home training and example. Where the father is a criminal as well as his son, it is hard to separate the influence of environment from that of heredity. Sichart found that out of 1714 criminals he examined 43·7 % of criminals had criminal parents. Gina Ferrero states that about 20 % of juvenile offenders belong to families of doubtful reputation. Whether there can be a direct transmission of criminality leads us to the question of the inheritance of acquired characters and is as uncertain as the same. Long before Darwinism dawned upon the world a great writer Lamark by name formulated the theory in favour of the inheritance of acquired characters in 1815. It was called his Fourth Law of Development. It stated, 'Everything which has been acquired or impressed upon or changed in the organisation of individuals during the course of their life is preserved and transmitted to the new individuals that are descended from those who have undergone such changes.[1] Darwin pointed to the inheritance of minute variations intensified by sexual selection. The Lamarkian Law has been refuted by the researches of Weismann who declares that only the modification of the germ plasm influences later generations and that what affects the structure or function of the body cells is not inherited. In the light of

1. Mosby, Crime, its Causes, and Cure, p. 83.

Weismann's theory the influences of education and nurture may seem reduced in importance, and many are even of opinion that the protection of the weak by the society hinders natural selection and encourages the multiplication of degenerates. But it should be remembered that proper nurture shuts the door to the expression of inherited tendencies. Dr. Thomson propounds the view that a change in environment and function may provoke variation in the germ plasm itself. Lloyd Morgan says, 'Persistent modifications through many generations though not transmitted to the germ nevertheless afford the opportunity for the germinal variation of a like nature.'[1] Besides what cannot be inherited may be acquired in virtue of social inheritance. The individual makes his own character by his habitual adjustment of his constitution to surrounding influences. 'Unlike the beasts that perish man has a lasting external heritage capable of endless modifications for the better, a heritage of ideas and ideals embodied in prose and verse, in statue and painting, in cathedral and university, in tradition and convention and above all in society itself.'[2]

As a great student of heredity puts it, it is fallacious to allege that we interfere with natural selection. Much weakness which may readily become fatal is simply modificational while some

1. Lloyd Morgan, Habit and Instinct, p. 319.
2. Arthur Thomson, p. 249.

intrinsically good constitutions only require temporary shelter. In certain cases physical weakness may have to be preserved for the sake of mental endowment. And social selection is a subtle process subject to laws of its own.

The whole problem of human conduct is so complicated by environment and other genetic factors that we rarely get positive evidence of the part that heredity plays as a factor in criminality. Clearer than that of heredity is the indirect influence of defective developmental conditions during ante-natal, natal and post-natal periods. Illness of the mother during pregnancy or any wasting or chronic disease or acute ailment may lead to mental or physical abnormality. It is said that the germ of syphilis may directly infect the embryo, but if the child survives its infancy, its physical conditions may not prove unfavourable. If she suffers from insanity, epilepsy, or if she is ill-treated and half-starved by drunken husbands, or if her family is too poor to provide proper nourishment, or if she overworks herself up to the moment of pregnancy, or if she has suffered from excessive worry on account of her illness or death of her husband, the mother may give birth to a child with physical and mental defects that may be associated with criminality. Dr. Healy instances a woman who, on account of a terrible mental trouble during the sixth or seventh month of her pregnancy, gave

birth to a feeble-minded child. 'One day she came home to find her house destroyed and her husband and four children burnt to death as the result of an explosion. The mental shock she suffered caused physical debilitation.'[1]

As regards the effect of alcoholism during pregnancy Dr. Healy says 'Alcohol circulates with great ease through such membranes as separate the mother's blood from the embryonic circulation and thus the growing brain cells are bathed in it in proportion as the mother takes it into her system.'[2] There is much to prove that cells in the younger stages of growth are more plastic and therefore more readily affected by alcoholic poison. So, the drinking mother stands a very good chance, by all accounts, of bringing forth children with defective or unstable nervous system.

In the natal period, the effects of premature births and of prolonged labour, and of the use of instruments should be taken into account. In the birth of twins, one of the two may happen to be smaller and suffer 'nutritional crowding of the womb.'

In infancy and youth, the influence of under-development, normal development and over-development combined or not with premature or timely or belated puberty may be associated with

1. Dr. Healy, p. 203. 2. Ibid, p. 204.

delinquency. Owing to under-development, the weak fail to be incorporated in the army of labour and swell the ranks of crime, 'finding pauper life easy and crime not uninviting.'

Over-development combined with a low type of childlike mentality especially in an unsuitable environment is a decisive factor of delinquency. It brings about a strange mixture of childish and adult characteristics. Dr. Healy instances the case of a boy of seventeen who has emotional reactions extremely childish; he cries upon the slightest provocation: he cannot stick at anything; when he gets tired of doing the same thing for a long time, he steals and runs away. The stress of over-development in girls and boys is productive of aberrant tendencies, especially because the mind has not been developed to the extent of the body, and in consequence, the power of inhibition is too weak to withstand the inner and external pressure of physical growth. Nutritional strength may lead to early menstruation which may give rise to vigour and vitality in excess of the average. Sex offences, stealing and running away may result as a matter of course. In many cases, the deviations may be temporary, followed by a reverter to normal conditions.

The non-development of sex characteristics at puberty leads to the rise of masculine types of women. Owing to the maldevelopment of the sex instinct, there is a predilection for unnatural sex

behaviour. Premature puberty is 'a possible danger sign' as it occurs at a time when one is not mentally equipped 'to stand the burden of the new life that puberty inaugurates.' In delayed puberty, the girls are little affected. As regards the age of puberty in this country, the lowest limit appears to be eleven. Hence the rule that early marriage should take place before the age of ten. In deciding the facts of development, the bodily conditions of Indian delinquents should be compared with Indian norms, and norms of the community to which they belong.

We shall now pass on to the consideration of the influence of age on criminality. It receives a clear delineation at the hands of Aschaffenburg. Age represents the influence of time on the physical and mental development of the individual. On the objective side it points to the gradual growth of criminal responsibility, a fact to which attention must be paid by every system of penal law. It is the egoistic instinct of the child that receives expression at the very outset of infancy. The child is engrossed by its physical needs and pays little regard to the interests of others; if any need of it is not immediately satisfied or if something is done which is distasteful to it, the infant flies into a passion. During the first two months it expresses its anger by movements of the eye-brows and hands; at the age of one it begins to strike those who chance to displease it. Predisposed

as it is only with its own needs the child marches straight to its satisfaction as its inhibitory powers are not well developed. If the centrifugal instincts be very determined in a child its action is likely to betray cruelty and callousness. Men like Nero, Louis XI, Charles IX and Louis XIV are said to have shown signs of great cruelty in youth. An instance from Lombroso may be instructive. 'A certain Rizz while still at the breast is said to have bit his nurse so badly that bottle-feeding was substituted; at two years he stuck pins into his brother's pillows and played dangerous tricks with them; at about four the child broke open his father's cash box and stole money to buy sweets; at six he was the leader of mischief among school-going children; at fourteen he seduced a servant and ran away and at twenty he killed his financée by throwing her out of a window.' [1]

Some children become so angry that they get ill for days together. Perhaps owing to the influence of ennobling home environment many normal children tend to be gentle even at two years of age. The child tastes of the tree of knowledge only when its parents and elders impose restrictions on its mode of conduct. What is displeasing to the mother, the child knows, ought not to be done. In its view everything to which it is accustomed is right and

1. Gina Ferrero Lombroso's Criminal Man, p. 54.

necessary. It refrains from a wrongful act simply from its fear of the parent or guardian or from imitation. It is incapable of abstract ideas of justice. Only if it is deprived of the possession of some articles it feels offended and treated unjustly. It is only by virtue of training at home and at school that it begins to understand the necessity of adapting itself to the needs of others. Although at the age of seven a normal child gets very broad notions of right and wrong it is only about the time of puberty that it gets a definite conception of the same. "The child may know very well that stealing is dishonorable but it may not know that counterfeiting, treachery and arson are penal. It knows that lying is a sin but it does not know that certain lies become suddenly punishable according to law and are called frauds."[1] It is from the plane of the child that its responsibility should be measured. As Hans Gross puts it 'the child's egoism receives strength from the fact that it is supported and cared for while it has to care for none else. While the adults work the child plays; the mother cooks and the child comes to the laden table; the mother washes and the child wears clean clothes; it is forgiven many a deed and many a word not permitted in the adult.'[2] Now as a certain age is passed it is blamed all of a sudden because it has gone on makiug use of

1. Dr. Hans Gross's Criminal Psychology, p. 371.
2. Ibid. p. 371, 372.

its recognised privileges. If it imitates its parent or teacher its responsibility is at an end. So a more kindly view of many a child's crime is necessary.

In this country the child is free from punishment only up to the seventh year. In Germany and other continental states it enjoys immunity up to the twelfth year. Persons between twelve and eighteen are called juveniles in European statistics, and they are punished only if they understand the nature and consequences of their act. In this country juveniles are aged below fifteen, perhaps for the reason that Indian children are said to be noted for their precocious intelligence.

Crimes by children may also vary according to their mental development in various parts of the country. Concerning the requisite mental development that is necessary to make a person liable at criminal law there is no definite standard and the courts are led more often than not by purely external criteria. What Aschaffenburg says of English criteria of understanding may apply to India with greater force; 'The methods of treatment in England and Ireland can only be stigmatised as an absolute mockery of the words and intentions of the law; criminal responsibility begins after the completion of the seventh year; with children from seven to fourteen proof must be given that they are sufficiently

matured to be able to distinguish between right and wrong. In practice, however, such maturity is always assumed in children over ten years.'

Intellectual or moral development does not go hand in hand with age in all children. The moral imbecile remains a child even after attaining manhood. What is not altogether got rid of at puberty even in normal children is the impetuosity of youth. Lack of self-control is the deadly defect of the period of adolescence, and it is a pity that temptations beset the youth at a time when their love of enjoyment is waxing and they have fewer means of earning an honest penny than the adults. This raises in them the motives of stealing, against which reason often fights in vain especially as 'youthful optimism makes light of the danger of being caught.' Theft is the kind of crime that is developed earliest in life and persists the longest. If adolescents manage to earn a little cash in industrial life they waste it in imprudent ways of enjoyment. Aschaffenburg says that the public house plays a potent part in the life of young men, in bringing about assault, mischief and the like kind of offences. In this period provocation induces thoughtless violence and physical strength freshly developed is the main incentive to assault. Evil suggestions of bad companions beguile the young into the belief that their deviations are incidental to their youth. It is curious to note that even

before puberty the sexual impulse misdirects children. In Germany 'between 1899 and 1901 for every three cases of rape among adults there were two cases among children of whom only a very small number were sufficiently developed sexually to commit the crime.'[1] The dangers of sexual intemperance are kept a sealed book to them and they are left in the lurch to become a prey to growing temptation. Hence the necessity to protect youths by enlightenment and good training from the dangers of the age of adolescence.

Each period of life has its own crimes. The distribution of crimes over the different periods corresponds not so much to mere physical growth as to the different conditions of physical and mental development and the way in which they are influenced by the external conditions of life. Manhood is characterised in criminal life by murders, homicides, infanticides, abortions, rape and other violent offences. Austrian statistics show that between 16 and 25 lies the age of greatest criminality. At a riper age fraudulent and defamatory offences are more common. In European statistics the climax is reached for murder between twenty and thirty owing to the then development of the stamina and intellectual force needed for acts of violence. Old age has its share of sexual criminality. In England

1. Aschaffenburg Crime and Repression, p. 145.

unnatural crimes are largely committed by those aged between fifty and sixty. This is attributed to the pathological condition called senile dementia and creeping paralysis. Aschaffenburg is of opinion that criminals above the age of seventy when sexual desires generally cease should be subjected to psychiatric examination;[1] he says that among all those whom he has come across he has not found one who was mentally sound. Apart from physical weakness there is a decline of mental power in old age, especially at a time when what is typically masculine or feminine disappears. It is the point at which old age begins. 'The task of life is ended and care about physical welfare increases. The result must be a series of unpleasant properties like egoism, claiming respect for experience, excitability, moroseness and sometimes cruelty. Age approximates the condition of dreams in which illusion and reality are easily confused.'[2]

Next we shall consider the influence of sex on criminality. The subject of sex influence may be considered in two aspects, the one being the tendency of women to crime and the other, the influence of the sex instinct on criminality.

The organic environmental differences between man and woman bar the one sex from completely realising the thoughts and feelings of

1. Aschaffenburg Crime and Repression, p. 154.
2. Gross's Criminal Psychology, p. 373.

the other. For some purposes woman is constructed better than man and vice versa. The psychological difference between the sexes accounts for variations in the nature and extent of their criminality. 'Woman is different not only in appearance but in manner of observation, judgment, desire and efficacy.'[1] Failure to appreciate this is the reason why women have come in for the condemnation of men everywhere and at all times. Homer refers to the scandal-mongering and lying of women. The laws of Manu condemn women to dependence throughout life. The Chinese assert that women have no souls. The Koran treats of women as if they were lower animals. We should study the criminality of women in its proper setting and not act as if they were men. We may consider their special psychic nature that has been developed by the demands of civilisation and custom and the influence of their psychological conditions on the production of crime. The general psychic characteristics of women are best brought out in Frederick's words: 'Woman is more excitable and more volatile and more movable spiritually than man; the intellect dominates the latter and the emotions, the former. Man thinks more but woman senses more.'[2] Woman possesses more reproductive power than imaginative force. For instance, if the plan of a criminal act be

1. Gross's Criminal Psychology, p. 301. 2. Ibid, p. 309.

independent and completely worked out it would be of masculine origin, but if it requires support the originator thereof would be a woman. Woman's position in social life has sharpened her inner sense and developed her intuitive powers. She clearly feels the mental status of her environment. A German writer, Heusinger, says that women are wise when they act unconsciously but fools when they reflect. Their habits of life are calculated to develop their emotional possibilities rather than intellectual capacities. Objectivity is a rare quality with them. They will understand the actions of men in the light of personal bias. A woman cannot easily be turned against the current of her will. Her obstinacy is often a factor in her criminality. Feminine conservatism is charaterised by a sort of stupidity. In India this is clearer than anywhere else. Hans Gross says that a woman may out of piety have preserved for years even the poison she once used to commit murder with.

What is of moment for our purposes is that dishonesty is said to be a characteristic of women. Men are dishonest when they are effeminate. Women's dishonesty more often consists in partial suppression of truth rather than in complete mendacity. Their partial dishonesty will be due to their tasks in social life; they have to lie in order to conceal their age, defects and diseases; they have to deceive children about so many

things. Scopenhauer says: 'Nature has given woman one means of protection and defence and that is her hypocrisy.' Their tears often represent a mixture of poetry and truth. Aschaffenburg says: 'If man is brutal, woman is insincere, even the cleverest and most useful of the servants being thievish.' Another point to be noted is that the woman does not clearly discern the line between right and wrong. Petty thefts are scarcely regarded as delinquencies. 'What woman thinks mere sweet teeth in her servant girl is larceny in criminal law.'[1]

The impulse to seek variety may insensibly lead woman into adultery or make her prone to disloyal conduct. If this tendency catches hold of her in a bad mood excited by a somewhat harsh behaviour of her husband, it takes a strong hold of her mind and in her musings takes her farther and farther from him. A man is nothing to a woman to whom she is not everything and if he is nothing he deserves no special consideration, and if he is undeserving, a little disloyalty is not so terrible. It is a case of anticipatory disloyalty if a woman marries a man in order to carry on undisturbed her love affair with another.

The extraordinary love of woman for man is at the root of her complicity in her husband's crimes. Sometimes weak women are won by men who may not be loyal but who have made a reputation

1. Gross's Criminal Psychology, p. 347.

of being a great hand with them. A loving woman does not blame her disloyal husband but turns all her hatred on her rival. Hans Gross says that the abandoned mistresses attack only their rivals in the wedding of lovers. Feminine hate is worse than the devil's. The pursuit of revenge is specifically feminine. Lombroso is of the view that criminal women are fundamentally inclined to cruelty. The final expression of cruelty is child murder and poisoning. Poisoning is a feminine crime ; an effeminate man alone would resort to this. Poisoning for love is so common in this country. It is due to the familiar traits of women.

One form of submerged sexuality is a condition of subdued discontent springing from the experience of an unsatisfied desire. It is found among girls, young women and undeveloped or feminine men as a very significant phenomenon. It betokens a continual wish to fill out an inner void. Even the best substitute is only a poor compensation for the dissatisfaction of the sexual appetite. The persistence of ennui for a long time works the greatest danger. It leads woman from petty misappropriations for the sake of the beloved to the murder of the unloved husband.

Italian positivists assert that woman is less erotic but more sexual, *i.e.*, the woman cares more about the satisfaction of her maternal instincts. Sex is a source of very numerous hidden impulses. It often works insensibly owing to the sense of

shame attaching to it. A pregnant girl's mind is filled with cares and anxieties about a developing creature that is capable of bringing weal or woe to its parents ; she practically feels a sense of the endangerment of her life. What would be the feeling of a poor abandoned bride big with child, and how anxiously she would be impelled to find a husband for economic or civil reasons. Under such circumstances a woman rendered with child by a poor lover desires to seduce a man of wealth in order to get a rich father for the child. As regards the difficulties of pregnancy the following remark of a great author is interesting: 'If it were naturally so arranged that in every wedlock man must bear the second child then there would be no more than three children in the family.'[1] The prospective birth of an illegitimate child makes the mother keenly alive to a sense of anticipated dishonour, the difficulties of pregnancy, impending alienation from relatives or banishment from the paternal home, fear or loss of good position and care for the well-being of the child that may be born. Lombroso attaches much value to the maternal functions of the female owing to which there is a tendency to perpetuation of her physical charateristics. When woman's passion is no longer required for the function of motherhood its impulsion may explain more than one criminal event.

1. Gross, p. 320.

Among the various periods of a woman's life the times of puberty or menstruation and pregnancy are the most troublesome. Of these, menstruation may lead to a change of personality at times. Men experience no process analogous to it. The first effect of menstruation is the intensity of the sexual impulse even in frigid women just after its conclusion. Before the commencement of it the girl is in her prime of life, and if she had then little to do, her 'unused spiritual qualities, ennui, waking sensitivity, charm and curiosity about sex affairs combine into a dangerous mixture,'[1] and may issue in delinquencies like unjust complaint, false testimony about seduction, rape, arson, accusing letters and slander. A good girl surprisingly enough committed a crime during her first mensis; in the second mensis she showed some unrest; afterwards she became all right and never after inclined to crime. Similarly most honourable women may lie and steal, assault and commit arson during their menstrual aberration. Sometimes women may experience even an impulse to murder; lying springs from a disturbance of the imagination. Stealing is due to the overpowering seductive quality of petty jewellery and the like, and offences against person are due to nervous excitement seeking violent satisfaction. By means of mental tests it has been discovered that there is a mental change at this period.

1. Ibid, p. 313.

Lombroso's view is that before puberty and in old age women resemble men and hence show a greater criminality. Before puberty, the criminality of girls is greater than that of boys; is equal at puberty, less at child-bearing and then rises again. English statistics show that women in England are most violent between eighteen and twenty-one. Crimes special to women are of a domestic or sexual character. Poisoning, receiving stolen goods, infanticide, abortion, arson and theft belong to the former category, bigamy and adultery belonging to the latter. Statistics of all countries show that women are less criminal than men. Kellar's view is that this is only apparent for,

(1) women commit offences many of which go unobserved

(2) that men are more lenient in dealing with women accused and

(3) women have far less opportunities of committing crime than men as is evidenced by the steady increase of women criminals where greater freedom is allowed to them as in modern life.

Dr. Ellis deals with special causes acting on women for reduction of crime: (1) domestic seclusion—with women in men's occupation the level of crime is high, (2) maternity is a strong preventive of crime—those with children being

less criminal, (3) avocations of women foster conservative instincts rather than destructive ones, (4) women are less given to drink not being largely employed in trade, (5) prostitution is a substitute for criminality in a great number of cases, and (6) sexual selection tends to diminish delinquency.[1]

In this country criminal statistics show that the criminality of men and women is in the ratio of 23 : 1 ; for, every possible influence is directed to develop their innate sentiments for the main duty of their life. Child-bearing is their chief purpose in the world. A Western lady writer named Billington expresses the opinion that the Hindu woman sooner and more fully learns the mysteries of existence than any others of her sex in the West. Although intellectual education is wanting in many, the Hindu girl is trained to cultivate the habits of obedience to her superiors. Family pride and the strength of traditional sentiment enable her to practise self-effacement. Caste feeling prohibits most of the young widows from resorting to prostitution. Widows suffer a joyless drudgery and keep to simple food and simpler clothing. The aspirations of an ordinary Hindu woman does not rise higher than the happiness of her husband and children. Only at the present day there are a few signs of Indian ladies taking an interest in public affairs. Millions of poor women are engaged chiefly in

1. Ellis, The Criminal, p. 216.

agriculture. Now a good many are employed in mines and factories as well. An ideal for the economic future of Indian ladies is presented in the book on their position in modern life by Her Highness the Maharani of Baroda. In spite of their economic development in time to come, Indian women are not likely to furnish a strong contingent to the army of crime so long as they remain true to their ancient ideals. Mrs. Billington observes, 'The small ratio of female to male prisoners is one of the most remarkable and interesting aspects of the whole social system of the East, from whatever point of view one regards it'.[1] In India, the women of criminal tribes serve their men best as receivers of stolen goods and rarely as prostitutes to be utilized for obtaining money. Apart from such women, 'the Indian female thief is, as a rule, guilty only of petty larceny, and minor depredations; she lacks the nerve, the readiness and the resources for bolder effort'.[2]

However, there are not wanting rare instances of women taking a leading part in criminal adventures. Recently a Burman woman is said to have headed a gang of dacoits and led it on in many a bold plundering raid. It is curious to note that she appears in masculine attire and boasts of having three 'wives.'

1. Billington on Women in India, p. 240.
2. Ibid, p. 242.

Passing on to the consideration of the sex instinct we see that it manifests itself in the lower animals in two impulses, *i.e.*, 'the approach of two individuals of opposite sexes and the discharge of reproductive cells in such a way that the two sets of cells come into the near neighbourhood of one another'.[1] These two impulses form part and parcel of one chain instinct, each step of such a chain preparing the way for the next. If it is combined with tender emotion love springs into life. Professor Freud assigns a sexual root to mental and nervous disorders of almost every kind, and to dreams and other mental processes that have no obvious connexion with sex feeling. But according to Dr. McDougall this theory confuses the sex instinct with sex love. He regards sexual perversions as the 'result of the display of self-feeling with abnormal intensity under the special conditions of the sexual relation.' 'Inverted love has been practised at all epochs and in all countries.' It appears that while the Greek and the Roman laws were indifferent in this matter, sexual inversion was punished in the Jewish law with capital punishment.

Whether sex inversion or homo-sexualism is natural or unnatural has been the subject of a great controversy. Dr. McDougall, who is a keen student of Social Psychology, holds that

1. McDougall's Social Psychology, p. 387.

inasmuch as the sex instinct renders animals capable of distinguishing members of the opposite sex, it is only perverse modes of obtaining sex pleasure pursued in an impressionable period of life that should have warped the sex impulse in the wrong direction of homo-sexuality. Dr. Ellis and others hold a contrary view. They say that homo-sexualism is natural and innately determined by the development of the germ cell in the requisite direction, the same germ cell evolving into a male or a female according to the embryonic conditions of development. Professor William James considers sexual inversion as a kind of sexual appetite of which 'it is very likely that most men possess the germinal possibility.' George Ives views the homo-sexual tendency as a psychic manifestation of the special characters of the recessive sex; for many creatures are bi-sexual, some even changing sexual functions with the seasons of the year. Male and female are merely opposite poles of the same thing. Between these come all varieties of temperament from the ultra-masculine to the intra-feminine. In the human race, the similarity between the sexes is said to be greater than in the lower creation. Professor Thoinôt expresses the view that homo-sexualism and exhibitionism may be (1) 'false and artificial' or (2) true and pathological. His treatise on medico-legal offences is an exhaustive and valuable work that deals with rape, bestiality, pederasty, and other kinds of indecent assaults.

With reference to abnormal sexualism Dr. Healy says that it need not be regarded as entirely pathological. The researches of biochemists on the internal secretions of various glands may throw a good deal of light on the subject. All forms of social intercourse in which men and women mingle under favourable conditions offer opportunities for sex attraction and sex delinquencies.

Sometimes exhibitionism leads to the theft of articles for sexually symbolic purposes. For instance, a woman's shoe or her handkerchief or other articles of wear or the cutting of a female hair may be stolen on the influence of sexual perversity. In certain cases the individual seeks satisfaction in inflicting cruelty, as in whipping another person. Some degenerates feel the sadistic impulse to cut or stab women and girls. This is the reverse of masochism which consists in feeling a morbid pleasure in being hurt or reproached by a woman. The impulse to insult women in public places and to spy upon persons of the opposite sex are all perversions of sex feeling. Superfluous it is to detail any more about the influence of this instinct, than refer to Victor Hugo's delineation of its mighty force. 'We know not with what fury that sea of the human passion foments and boils when it is refused all egress—how it gathers strength, swells and over-flows—how it wears away

the heart—how it breaks forth in inward sobs and stifled convulsions until it has rent away the dykes or even burst its bed.'

B—ENVIRONMENTAL SIDE.

Having considered the organic sources of criminality we have now to observe how the human organism is influenced by physical environment. It is the physical environment that has determined organic evolution and the development of racial types. Its indirect importance is immense both from an economic and climatic point of view. It is the character of the natural surroundings that settles the conditions of the social environment. Here we shall consider the physiological effects thereof as factors in criminality.

As regards climatic influences, Lombroso lays stress on the effect of heat. Heat produces inertia which leads to use of narcotics that unsettle the temperament. Excessive heat renders the constitution subject to spasmodic activity. Aversion to work and fanaticism are also induced. Extremes of heat and cold have a depressing influence on human energy. The snows of Russia made weaklings and cowards even of soldiers. A cold climate if damp favours the consumption of alcohol. Dry heat and moderate cold are exciting enough for criminality. Its influence on sexual crimes is admitted on all hands.

The thermic law of delinquency enunciated by Quetêlêt states that while crimes against person are numerous in hot countries like the southern parts of France, crimes against property are at their maximum in the north and that while in summer there is an increase of crimes against person, in winter crimes against property increase in turn. This so-called law is based upon inaccurate facts and it attaches undue importance to the influence of climate, which is hardly a fundamental cause of crime. It is only an accelerant of existing tendencies. The increase of crimes against person is very great in certain parts of Northern Europe where there is absolutely no question of heat properly so-called. Professor Tarde rebuts the thermic law by refereuce to historic conditions. He says that 'statistics compiled in epochs when civilisation not having passed from the south to the north, the north was more barbarous, would certainly have shown that crimes of blood were more numerous in the northern climate'[1] than in the south. The Scandinavian literature of yore shows that homicide during the period of barbarism was a matter of daily occurrence in the north. Were the thermic law accurate we should find a greater number of crimes against person and a smaller number of crimes against property with each degree nearer the equator. If this were the case

1. Bonger's Economic Conditions and Criminality, p. 109.

dishonesty would be unknown at the equator, while violence would there be at its maximum. It is instructive to see that in tropical countries crimes against person do not increase during the warmer season unlike in the temperate zone for the reason that an excessively hot climate depresses activity. It should also be borne in mind that it is hard to separate the economic influence of climate and seasons from their physiological effects.

The influence of seasons on criminality has been studied by statisticians even before Professor Ferri examined it with reference to France. The general rule of the statisticians is that crimes against person show a maximum in summer and crimes against property are at their height in winter. Guerry has shown that in England and Italy murder and rape occur on the largest scale, in the hottest months of the year, *i.e.* from June to August, while poisoning is rampant in May.

On an examination of the criminal statistics of France for each year between 1826 and 1869 Professor Ferri found that there was a parallelism between heat and criminality because crimes showed high figures in hot years. Dr. Morrison says that although crimes against person increase in hot months there is no parallelism between heat and criminality at least so far as England is concerned. In considering conditions of Indian climate he says that the economic security

of the people insured by the social arrangements of occupational castes counteract the influence of climate ;[1] but how far his statement holds good at the present day when India is in an economic transition remains to be ascertained. Lombroso noted the times of uprisings during over a century almost all over the world and discovered that most of them took place in the hottest months of the year. In the case of five nations of Europe summer showed the greatest number of revolutions, while in four other countries the maximum of uprisings was in spring.

While the climatic effect of seasons is emphasised by the anthropological school, socialists and sociologists point to their economic significance. The psychological aspect of the matter is insisted on by the German Professor Aschaffenburg and those of his school. He declares that in Germany sexual crimes showed an increase from March to July and that obscene acts were at their maximum between March and June. He draws attention to the fact that the time of commission of the offence must be noted in each case. The proportion of legitimate to illegitimate births must also be taken into account. The number of illegitimate conceptions in Germany increases from March onwards and reaches its maximum in May, while the number of infanticides rises from February to April showing a corresponding parallelism to the

1. Dr. Morrison, Crime and its Causes, p. 56, 57.

months of conception, *viz.* May, June and July. All writers agree that the sexual impulse is quickened during spring and summer. If it is ascribed to the influence of heat by the Italian School, the element of opportunity is emphasised by the socialists but a psychologist like Aschaffenburg refers it to the periodic fluctuation of the 'psychic balance'. Our organism is subject to acute periodical changes; in animals the sexual instinct makes itself felt in definite times only. The more animals become domesticated, the less sharply defined is the periodic sexual excitement. Havelock Ellis says that menstruation in women is analogous to the period when animals are in heat and that men are not entirely free from periodicity of excitement. The fluctuation of the psychic balance in different seasons is regarded as having little to do with climate. Aschaffenburg establishes it in connexion with suicide. Tendency to commit suicide is at its height in June in Germany and in May in other countries. He contends that there is a parallelism only up to June.[1] Subsequently suicides decrease although heat is on the increase till the end of August; this shows an absence of correspondence between the offence and the climate.

That the soil has a great influence on the health and intelligence of the people may be

1. Aschaffenburg, p. 23.

gathered from the condition of inhabitants in goitrous districts. Cretinism is due to the telluric influence of the soil. It weakens children and stunts their growth. It causes the birth of hideous dwarfs. The mental effect of the disease varies from complete idiocy to mild imbecility. The latter result alone is met with in India in the sub-Himalayan region and is amenable to treatment. Mountains normally breed strong races because man has to struggle there with Nature to hold his own. The mountaineer is tempted to violence on account of his physical strength. For the same reason it is no wonder if crimes against person show a high percentage in the mountainous districts of France; while the level country shows 20 % of crimes against person, the hilly department exhibits 33 % and mountainous districts 35 % of the same.

As regards other meteorological influences a statistical study of it has been made by an American author called Dexter. He compared the number of arrests for assault and battery in the City of New York during the years 1891 to 1897 with the undulations of the barometer. With the fall of the barometer the number of arrests rose. He attributes it to the position that the presentiment of a storm which is preceded by the heaviness of the atmosphere induces an emotional state prone to fighting. As regards humidity he found that excess of assaults went with

low readings since a high degree of heat had a depressing effect. He also discovered that the number of arrests increased with the rise in temperature up to 85 degrees at which point was observed a sudden drop. This was due to the debilitating effect of intense heat.

With respect to wind Dexter's curves show that 'the mild winds of between 150 and 200 miles per day are the most pugnacious ones.' During periods both of calms and of high wind there was a fall in the number of arrests. 'The cloudy days are the freest from personal encounter that has attracted the police,' as they are devitalising in nature. From his observations Dexter deduces the principle that 'the reserve energy capable of being utilized for intellectual processes and activities other than those of the vital organs is affected most by meteorological changes. Misconduct is viewed as a result of an excess of reserve energy not directed to some useful purpose. This view reminds us of Professor Ferri's explanation of the influence of heat on criminality. He says that when the body is unusually warm, the consumption of material for the production of animal heat is cut down and hence a surplus of force is stored up capable of being used for other purposes and this in unison with the irritability of temper may easily degenerate into criminal activity. This effect of heat is scarcely recognised by other writers. It

is rather its effect on the emotional side that is emphasised by a host of writers on the subject. Even if the view of Ferri holds good it remains only a remote auxiliary of crime to be drawn upon when any centrifugal emotion is excited and seeks violent expression. It is only a condition of crime commission rather than a cause of it.

With reference to meteorological influence Lombroso says that the inmates of prison grow most excited just like the insane when storms are approaching and during the first quarter of the moon. His examination of the prison register at Turin showed that every day a certain number of a specific description of criminals entered the prison.[1]

PART II—OCCASIONAL CAUSES.

We shall now pass on to the study of occasional causes which present opportunities for the commission of crimes. The configuration of a country sometimes presents facilities for the commission, especially of associated crime. Mountain tracts afford scope for ambuscades and escapes. Mountains have served the basis of operations in many a rebellion and war. It is owing to the scarcity of population that sexual offences and crimes against property are fewer in hilly tracts than on

1. Lombroso Crime and its Causes, etc., p. 12.

the plains. The mountain caves of Konkhan afforded a proper shelter for the Mahratta raiders of the eighteenth century on the lands of Mussalmans in the neighbourhood. Mountains and other retired spots in remote corners are the favourite haunts of criminal gangs or tribes. In every country, province or district there are certain special villages or localities which are notorious for their criminal traditions. Before the introduction of railways certain stone halls on highways in benighted parts of the country intended for the celebration of occasional festivities sacred or secular, furnished convenient rendezvous for robbers and marauders. In Italy Sighele refers to the village of Artena as the most formidable stronghold of criminals of historic antiquity. Apart from convenience it is the evil tradition of criminal tribes that fosters criminality in these spots.

While collective criminality finds its home in established criminal centres, individual delinquents find their safe quarters in the densely populated parts of cities. A French author speaks of Paris in these terms: 'The whole civilised world empties its scum into this cosmopolitan city where a mob without country, without principles or traditions presumptuously directs the elections and takes advantage of the misfortune of the country to overturn the Government and put itself in power.' The elements of civilisation are

far more prominent in the city than in the country. Civilisation brings about the multiplication of human needs and desires, the pursuit of which by a vast population necessitates the enforcement of a large number of rules and regulations in the interests of public peace, order, health and prosperity. Violations of these swell the criminal statistics as a whole; so that returns in respect of serious crimes alone should be observed in order to ascertain whether there is a real growth of crime in cities. Appearance of greater criminality in the cities may also be due in part to the greater vigilance of the police. Congestion in cities breeds a violent and morbid tendency towards crime and immorality. 'The seductive influence of youth, femininity and mutual contact of sentient persons'[1] lends additional strength to one's natural tendency to imitate evil ways. Organised vice is as well the hotbed of much criminality in cities. City life is more suited to the business of the professional criminal than life in the country. In cities a criminal enjoys the advantage of his reputation being known only to a few. He can acquire a knowledge of scientific aids by coming in touch with the social life of the under-world. The city furnishes good residences and secret places for hiding. Crimes incidental to civilisation like forgery, swindling and libel, etc., abound therein. The criminal

1. Lombroso, Crime and its Causes, p. 53.

finds ready hints and encouragement from the reading of criminal stories in newspapers and from the spectacle of criminal trials in law courts. For political offenders also, the secret societies in cities are inviting enough as seminaries.

There are certain kinds of crime which admit of commission only in cities. The crowded character of city streets favours pickpocketing which may go on quite unobserved as it is easy to pass on unseen the stolen things to a great distance from the victims. Blackmail finds there a greater number of victims than in country parts. The bad housing conditions in city life are at the root of a good deal of crimes against person. Inducements in towns are similarly overwhelming. Immoral theatres, gambling houses gaudily furnished, prostitution highly commercialised, numerous saloons for drink, facility for forming evil associations, and want of parental control pave the way for rank vice and worse criminality. The youth that resorts to the city with the hope of pushing his fortune, if he is disappointed of his end, yields to the temptations to share the life of the under-world ; while such immigrants in rural areas cannot resort to crime with as much ease as in the city. The complexity of social life exerts a strain on the nerves to which defectives grow thoroughly unequal. Normal enjoyments not being available in city life, the nervous strain

creates a craving for low pleasures. To crown all, industrial activity breeds alcoholism and the evils of economic inequality.

Owing to the absence of civilising influences country-life presents a greater scope to crimes of violence. Although there are no gambling houses in the country, intemperance disturbs the peace of humble homes and secret vice abounds in all nooks and corners. Owing to lack of houses of prostitution, indecent assaults upon adult women show a high figure in the country ; whereas in city life, luxury, abuse of alcoholic drinks and satiety by over-refinement lead to the increase of outrages upon girls. Abortion is numerous in the city while infanticide is common in the country. Petty thefts like those of grain, firewood, fruit etc., are incidental to agricultural life of the country; while commercial frauds are the order of the day in the city. Conservatism is a characteristic of country life while refinement and progress are incidental to life in cities. This explains the comparative absence of political riots and revolts in the country which are the frequent upshot of agitation in cities.

Consideration of city life leads to the consideration of population as a factor in criminality. Wherever people assemble as in fairs, festivals and railways there is a vast scope for the business of the light-fingered gentry. The general rule is that

crimes of violence decrease while crimes against property increase with the growth of population, which at the same time affords more frequent opportunities for quarrels, riots and assaults. Lombroso compared the statistics of various countries and found that States with a thin population have a high figure for homicide.

Homicide and rape he says show a high figure with the minimum or maximum of density. This is due to the fact that such an increase is found only in ports of immigration, industrial and political centres where opportunities for conflict are more frequent than anywhere else. Influence of imitation and the evil suggestibility of crowds account for the abundance of vice and crime.

The question of population is allied to that of emigration and immigration. In estimating the effect of these factors, statistics of foreign criminals should be compared with that of native offenders and for the sake of clearness and certainty the birth-and-death rates in the country must also be taken into account. Lombroso's comparative study of the subject in Italy and France is very instructive. The contrast between France and Italy in the statistics relating to crimes of violence is due to the fact that in France immigration was excessive while it was lacking in Italy. Immigration brought in one million of men in a condition in which they were prone to commit crime and these people were

concentrated at certain points in the great centres of migration. There were about 50,000 Italian residents in Paris, Marseilles and similar centres which showed a maximum degree of criminality but when the native element alone was considered it decreased appreciably. In the department of the Seine, out of 40,000 persons arrested only 13,000 were natives of the place. Likewise in America, out of 49,000 individuals arrested in New York 32,000 were immigrants. Of 38,000 prisoners in North America 20,000 were children of foreigners.[1] It should be borne in mind that strangers are generally friendless in a new country and they feel themselves unequal to the novel conditions of foreign life. Once the immigrants get adjusted to the environment they show a decreasing rate of criminality. So long as they lead a nomadic life they furnish the greatest contingent to crime as their temporary stay there makes them irresponsible. For the same reason thieves are nomads. In India pilgrimage opens a wide door to reckless life and consequent delinquencies. It often leads to rapes and robberies. Dr. Joly laid down the rule that 'when the tide of emigration is weak, it draws the stronger and more intelligent of the people; but when it becomes too violent it sweeps along good and bad alike.'[2] This rule is subject to modification in countries like India where

1. Lombroso, Crime and its Causes, p. 65.
2. Ibid, p. 66.

emigration is rare from place to place and especially to places beyond the sea. Only the homeless and the poor first leave the country in search of work and fortune, as evidenced by the departure of Indian coolies to Africa, Straits Settlement, etc. Emigration from the country to the city of vagabonds and youthful fortune-seekers may also conduce to the greater criminality of the latter.

The study of statistics is indispensable for the investigation of a great many social factors of criminality but due caution in the use of it is very essential. The first point to be noted is that statistics do not give us a complete picture of the real extent of delinquencies in any country. Criminal returns are based on the information supplied by the Police and the Judicial authorities. These officials do not recognise all cases of crimecommission. A great many criminals remain unknown even to the persons injured. In several cases the aggrieved party does not complain for fear of troubles of criminal courts. Even though an account of offences reported to the Police may show the number of crimes committed, statistics of convictions show only a lower figure as the accused are not all convicted by the courts; even then false accusations must be allowed for. The attitude of the Police is sometimes responsible for differences in the

percentage of crimes. Dr. Morrison shows that in 1886 cases of annoying male persons for purposes of prostitution increased from 1475 to 3233 in England.[1] This was really due to the greater vigilance of the Police. Leniency or stringency of courts has also its effect on the volume of crime. The growth of criminalty may be obscured by the population multiplying faster than crime. The daily average of inmates in prison is no criterion of the rise or fall of crime as it depends on the length of the sentence of each prisoner and not on the number of persons committed to prison. However, if the daily average decreases, it means the offences are not very grave. The increase in the amount of crime, says Dr. Morrison, may often be the indirect result of a moral advance in the average sentiments of the community. At the same time decrease of crime may show that the State pays less care for the security of the people. In comparing the criminality of different countries the value of statistics suffers a reduction in view of differences in the conception, nature and extent of criminality, in the organisation of the Police and the Law Courts and in the penal systems of various countries. Dr. Morrison states that murder is perhaps the only offence on which there exists a fair consensus of opinion in a number of civilised countries but

1. Dr. Morrison, Crime and its Causes, p. 6.

even here its definition presents variations in different systems of criminal law.

A system of international statistics arranged on a universal plan may render it easy to institute a comparison between the volumes of crime in various countries. Even at this stage statistics relating to serious offences present common features in respect of several States and supply information enough for inductive observation. It was the collection of statistics with reference to age, sex, climate and temperature that preceded the study of social factors by criminologists. Statistics present much of the requisite data for the building up of the science. Quetêlêt, Guerry, Maury, and G' Mayr and other statisticians foreshadowed the labours of Ferri, Sighele, Lombroso, Joly and the rest of their line.

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LECTURE IV

SOCIAL CAUSES.

In this lecture we shall deal with the social causes which prepare the ground for criminal activity, account for the bulk of crime in any country and admit of removal through external agencies. Let us first direct our attention to factors other than economic. The influence of social environment on the conduct of man has been recognised since the birth of human society. Viewing society in the light of an organism and man as an integral part thereof almost all thinkers on the subject from Plato downwards have looked upon crime as indicative of the disease or degeneracy of the former and aimed at the reformation of the same as indispensable for the moral health of the latter. In the ideal of the State the highest form of society met and mingled all the efforts of the Greeks in religion and law, among whom 'the State knew neither moral nor legal limits to its power.' Socrates called it 'the body politic' and Plato conceived of a model republic representing the millenium in contrast to the City State of his day. The high theory of the Greeks was modified by the opportunism and adaptability of the Romans. At the threshold of modern history stands Sir

Thomas More with his Utopia meant as an ideal organisation for the cure of social evils. In it he explains the aetiology of theft in these words 'In the mean season they that be destitute of service, either starve for hunger or manfully play the thieves; the punishment of thieves passeth the limits of justice and is also very hurtful to the public weal.'[1] Similarly Jean Meslier refers to the partial distribution of wealth as the source of ill-will, hatred and envy among men manifesting themselves in complaints, commotions, insurrections, war and infinity of like evils. Godwin traces violence and fraud 'to the monopoly of wealth and pleasures by the self-centered in prejudice to the existence of the poor.' He says: 'The situation has become such that for the poor man the state of society is a state of war. Man must cease to have senses and the pleasures of appetite and vanity must cease to gratify before he can look on tamely at the monopoly of them. Force grows out of monopoly; the spirit of oppression, the spirit of servility, and the spirit of fraud, these are the ultimate growth of the established administration of property; they are alike hostile to intellectual and moral improvements. The other vices of envy, malice and revenge are their inseparable companions.'[2] In his 'Condition of the working

1. Utopia, p. 29-30.
2. Godwin's Enquiry Concerning Political Justice, p. 333, 334, 456.

classes in England,' F. Engels describes crime as the expression of the workman's contempt for the existing social order which makes family life impossible for him. Robert Owen said most pertly : 'It is not man himself, it is his circumstances that form his character ; an unfavourable environment produces a bad man ; a favourable one a good man.' The views of these writers have been confirmed by statisticians of recent date like Guerry, G. Mayr and Quetelêt, etc. Quetelêt will ever be remembered as the author of a memorable French treatise called 'Social Physics.' According to him 'Society contains within itself the germs of all the crimes that are about to be committed, and the criminal is only the instrument which executes them.'

In the domain of modern Criminology it was Professor Ferri who first drew attention to the social factors of delinquency, although he did not value them highly till he was touched by the socialistic spirit of his countryman. Credit is due to him for widening the basis of Lombroso's researches by enunciating his synthetic theory of factors 'which is the most scientific production of modern times.' The theory in its primal form was called the law of criminal saturation : 'Just as in a given volume of water at a certain temperature we find the solution of a fixed quantity of any chemical substance, not an atom more nor less, so in a particular social environment with

certain defined physical conditions of the individual we find the commission of a fixed number of crimes.'[1] Ferri classifies these factors into three groups : Individual, Cosmic and Social. The first group falls into three sub-divisions composed of (1) Physiognomy and the organic anomalies of the skull, etc., (2) the psychic peculiarities, anomalous in nature of the feeling and intelligence and (3) the personal factors which may be either biological as race, age, sex, etc., or bio-social like status, education, etc. The second group comprises the effects of climate, soil and other meteorological conditions and the third pertains to the influences, moral, religious, economic, demographic and the like. As to the relative importance of these factors Ferri gives the palm to individual causes. In his 'Criminal Sociology' he says that the social environment gives form to the crime which has its origin in an anti-social biological constitution, and that without special individual inclinations the external influences would not be sufficient for the birth of crime. In the eighties of the last century Ferri had to enter the lists for a time with Turati, a leading exponent of the socialistic view. His 'Socialism and Criminality' written with a polemic aim underrates the influence of education, economic conditions and other social factors of great moment. However, his thoughts

1. Ferri's Criminal Sociology, p. 209.

underwent a change in a decade and his inclination to the socialistic side runs clear in his criticism of the view that 'Darwinism will destroy Socialism.' He paid his tribute to the founder of scientific socialism in a famous utterance of his at Milan in the year 1894 when he said 'Marx complements Darwin and Spencer and together they form the great scientific trinity of the nineteenth century.' Ferri is the centre of light and shade in the field of Criminology. The history of Ferri's thought is in a way the history of the progress of the Criminal Science. He is the central figure of the Italian trio with Lombroso on his right hand and Garofalo on his left. While Lombroso gives undue importance to the organic elements Garofalo emphasises the psychic anomalies. Both the factors meet and mingle with the social in 'the New Horizons' of Professor Ferri. But as all of them give prominence to organic causes the Italian school is spoken of as anthropological in character.

The exponents of the environmental theory while accepting the position that crime may have a pathologic source in certain cases declare that there is only a small percentage of criminality resulting from morbid organic conditions, which are only symptomatic of the inherent defects of social life. For instance if degeneracy and crime result from drunkenness, inebriety may be the

indicator of poverty which is a social phenomenon of no small seriousness. Again the maxim that every crime is the product of individual and social factors applies equally well to every human act be it laudable or otherwise and hence it explains very little of criminality. Further there are certain individual factors like courage, intelligence, strength, etc., which help their possessor rather than those who have them not to commit an offence and which have nothing to do with criminality by themselves. How can these be regarded as causes of criminality. Even the best of men may be driven to crime by force of circumstances. Hence by its causes should be meant only those conditions or factors which call the anti-social instincts of man into play. Professor Manouvrier's minute and searching exposition of the term 'environment' is well worth attention. He takes the case of two brothers brought up under the same surroundings and says that the mere fact of having been born first or second is not without its social importance. To have been reared with an older or younger brother constitutes a difference of environment that may contribute powerfully to differentiate character. Added to this the differences proceeding from nurses, servants, companions, diseases and games, etc., open the door for vast variations in upbringing. Brothers taught in the same college might not have had the same teachers

and fellow pupils nor the same comrades. Then between the education given and that actually received there may be a great difference, since the influences that act upon the child outside of the curriculum of school studies have a greater chance to be effective and permanent especially where it is followed in a formal and least agreeable manner.

If Ferri simply drew attention to social causes, it was Laccasagne who first emphasised the importance of environment in opposition to the Italian view in the International Congress of Criminal Anthropology which met at Rome in 1885, although earlier than he, Turati the socialist contended that the individual factors exercised only a minimum influence on criminality. Setting aside the delinquency of insane and emotional criminals, of whom either group constitutes only about 5 per cent. of the population the greatest portion of criminality is found to be due to social conditions. Ferri himself says that out of 100 individuals placed in the same environment 60 commit no crime and out of 40 that remain 5 prefer suicide and another 5 turn insane while an equal number are beggars or vagrants, so that only 25 of them become criminals. Out of these pathology claims several and the remaining number represent the bulk of crime which is due to social causes.

While thus the individual and the social factors are respectively the special forte of the two schools the interpretation of physical conditions is a matter of controversy between both of them. In the eyes of the anthropologists they mainly influence the human organism but the sociologists emphasise their economic effects.

We find a union of views of both these schools in the position of the bio-sociologists. Professor Liszt an exponent of this school describes crime as the product of the joint action of two groups of conditions, the first of them comprising the innate and acquired characteristics of the individual and the second the environment of society. While the other schools emphasise each a side of the question this has regard to both of its aspects. Further the value of its teachings lies in the fact that it bring to light those conditions of criminality in which neither of the class of factors exercises a predominant influence and presents a combination of them 'along a whole gaumut of shades and modes which result in criminal action.' The one thing that calls for remark is that acquired character is classed with hereditary factors without being enlisted on the side of environment. But it may be that the term 'environment' as used by this school does not bear such a wide import as with the champions of the sociological view.

A comparative review of the position of the Italian and French schools makes it clear that the relative importance of both classes of factors individual and social may vary in each specific case of delinquency. At one end of the social scale stands the saint who prefers starvation to criminality and whose self-control is thoroughly ideal in character. But if he mingles in society and preaches an ideal contrary to established law, he places himself within the fringe of the penal code and the State may stigmatise him criminal. This is incidental to the circumstance that law is technically the expression of the regulated will of the Sovereign as constituted at a given time. Below the grade of unworldly saints invulnerable to environment the best of men may be incited to crime under the extreme of social stress. Professor Monouvrier says, 'It is not only in the prison that you find born criminals but we are all such if we understand by this abusive phrase the expression of tendencies to enjoy things ourselves in case of need to the detriment of others.' In the words of F. Von Liszt 'the beast in man is in all circles and in all strata of society.' Many men can order murders but self-interest deters them from it. Educative influences and solicitations of self-interest are exceedingly variable under different circumstances and their effects vary from man to man.

On the individual side, recent investigation of the mental mechanism of delinquents as those carried out by Dr. Healy shows that as regards the extent of criminality organic factors like feeblemindedness, subnormality, etc., loom equally momentous with social causes. They must be viewed both in their positive and negative aspects, for in most criminals the inner impetus to crime may be lacking; while the inability to withstand the pressure of external driving forces is often the main cause of their delinquency. But it should be borne in mind that whatever man should do to root out criminality is possible only through such social readjustments as might bear upon and modify the individual conditions.

Now let us turn our attention to a few special theories propounded by several students of social science; most of them explain only habitual or professional criminality. Paul-Aubry delineates the position of the bio-sociologists after the manner of his conception. On the biologic side, neurotic disturbance, anatomical deformity and direct heredity prepare the ground for delinquency whose manifestation in action is determined by the laws of suggestion and imitation, called into play by defective home training, study of criminal stories, prison life and the spectacle of capital executions and the like. In relation to social causes he only helps us to appreciate the importance of these two psychological processes

on human conduct. As is the case with exponents of similar theories the writer elucidates only a certain department of the ætiology of crime.

At the dawn of this century (1901) Salillas a Spanish scholar enunciated the theory of Parasitism. By parasitism is meant absolute dependence on society for maintenance without rendering any real service in return. The criminal is a parasite who, because of his nutritive poverty and social inadaptability, wants to usurp the fruit of others' labours in order to satisfy his own needs and appetites. Max Nardau is of the same view and emphasises only the social aspect of the question although he calls his book 'A new biological theory of crime.' This theory fits in with only habitual or professional delinquency. We may add that Salillas distinguishes criminals from beggars and prostitutes who are as well looked upon as social parasites. Criminals are the enemies of society, while beggars are its guests and prostitutes render a social service whatever be its value or import.

Failure in adaptation to social environment is elaborated as the fundamental basis of crime in Vaccaro's 'Critical Essays in Sociology and Criminology' (published about 1903). According to this author, inadaptability is incidental to the present ordering of affairs in human society. The law of natural selection is impeded by the

winners in the struggle for existence enforcing laws calculated to favour the aptitudes of the domesticated which they can employ for their own ends. Crime is an act which is dangerous to the interests of 'the favoured people of whom public orders is constituted'. Criminal laws have never aimed at a defence of the entire social body. His view is that there is going on a true degeneration of the human society mainly in the interests of the weak. The solution of the criminal problem consists in the betterment of the environment. Although this theory is tainted with the common defect of all partial views of criminality, it perhaps serves in a way to explain the position of criminal tribes in this country.

While Vaccaro sees the source of crime in the domination of the degenerate few who represent the State, Aubert develops the theory that on account of inadaptability the criminal has fallen away from society and has constituted himself a centre of action. The new life that he pursues with self as the centre while yet being a member of the society comes into conflict with social interest. According to this writer inability arises from the excitement of fears, (*i.e.*, morbid fear of poverty, fear of dishonour, etc). The feeling of frustrated life awakens a series of psychosis which incite to gambling, quarrelling, stealing and other forms of criminality. These

phobias and psychoses combine to explain the problem of criminalism. This theory gives us the best exposition of the position of the individual smitten with social inadaptability.

One other theory that deserves mention is that of Professor Gabriel Tarde. This author furnishes an erudite exposition of the possibilities of imitation in the field of delinquency. In its extent it may be viewed as a sociological counterpart to the principle of degeneracy in the domain of anthropology. This theory gives undue importance to the sway of example. According to him imitations of the high by the low is what most often takes place. For instance, arson which is a crime of the lowest class of to-day was once the prerogative of feudal nobility. Margrave of Brandenburg burnt 170 villages in his life ; the duel among ordinary men is a reproduction of the privilege of private war among barons of old ; coining was the monopoly of the dukes ; suicide is an imitative phenomenon in the highest degree ; theft had a brilliant past ; and at the present day new forms of crime take their rise in cities and spread out into the country. This view explains how any criminal phenomenon extends or persists but does not account why it does so or explain the rise of novel delinquencies.

Apart from this, Professor Tarde speaks of social crises arising on the abrupt passing from wealth to poverty and from poverty to wealth or

from a similar condition to its opposite as a chief cause of criminality. These social crises which may be economic, or politico-religious foment the struggle of classes highly prejudicial to public morals. This factor accounts for collective criminality rather than for individual delinquency.

With Professor Tarde we may consider the influence of civilisation on crime. He distinguishes two stages of civilisation, one in which society is enriched with an efflux of inventions and the other in which there is a cohesion of all forms of arts and sciences, 'which is a true coalition against crime'. The first stage is governed by the law of insertion whereby the innovations and improvements of to-day become the traditions and customs of to-morrow. Europe is now said to be in the first stage, and the gentle influence of civilisation manifests itself only in the moderation of primitive violence. Under the ash of civilised appearance criminality takes a crafty turn, for the criminal himself cannot easily resist the external force of the habits and manners of civilised life. If statistics show an increase of crime with civilisation it should be noted that it is due to the increase of wants incidental to the material progress of the society. We should not fail to note that there is also a greater tendency in modern times to bring accusations or file complaints on account of the facilities afforded by elaboration of the penal law

and changes in criminal procedure. Whether crime is on the increase or otherwise cannot exactly be measured in the light of statistics. Rather than compare it with the growth of population we may contrast the extent of criminal activity with the vast expansion of other activities in civilised society. Poletti instituted a comparison between criminal and economical occupations with the aid of the commercial statistics of France and showed that the latter had increased far more than the former. But his procedure has been criticised on the ground that it is hard to accurately measure the extent of economic activity in view of the infinite variety of elements involved in it.

The law of substitution has been favoured by the growth of civilisation. Every stage in social development has had its characteristic crimes. In primitive society revenge was gratified by blood-shed. Even to-day, Corsican vendetta and Sicilian violence are well-known horrors in Europe while in India the bloodfeud is a characteristic feature of the tribes on the Afghan frontier and among the savages of other benighted parts. In semi-civilised communities commercial competition was carried on with the help of armies and fleets. We need not go farther back in history than the days of the Massacre of Amboyna in 1627 which in the 17th century diverted the English trade to India from the East Indies. Was not our own country for a time the scene of

deadly strife between the French and the English traders of the 18th century? Now in the civilised society of to-day violence has yielded place to cunning and deceit and legal chicanery has replaced the duel. Commercial warfare is carried on at present through the perfection of the art of deceit. 'Political power is no longer won at the point of the sword but by money.' 'Modern criminals substitute for the more brutal knife or hammer of the past the resources of chemistry, physics, toxicology and the like sciences of the day.' In other words the type of crime characterised by force is gradually replaced by that distinguished by fraud. According to Lombroso the atavistic type is gradually superseded by the evolutive. These two categories of delinquency in one sense mark the difference in civilisation between the lower and the upper ranks of society. If the rich steal money from the public in business and politics the poor and ignorant manifest their reaction in demonstrations, insurrections, bomb-throwing and the like. This phenomenon may be viewed in another light. The criminality of the opulent may be said to represent the last degenerate phase of a passing civilisation, while that of the rising plebeian breathes, 'the wreckless audacity of youthful strength' even though he is in the minority, boldness and violence being characteristic of all minorities. Victory softens and enervates while the desire to conquer inspires courage and strength.

As regards the nature of the bulk of crime in the society of to-day, a great western writer expresses the opinion that 'the typical crimes of the most highly developed and successful nations are largely misdemeanours caused by the fine legal adjusments made necessary by ever more and more complex social life and that the rate of increase may not be as rapid in the twentieth century as it has been in the eighteenth and nineteenth.' 'There was so much to accomplish and so much has now been done to guard the rights and foster the upward growth of each and all under the laws, that we may well hope our suffering and arduous labours will make the creation of new forms of crimes less necessary for our great-grand-children. Education and social discipline may gradually become less difficult and its lessons more easily and quickly learnt.' 'If this proves true and if society continues to be successful in diminishing the amount of criminality under old laws then the age of maximum crime will have been passed and from thenceforth society will have a decreasing rather than an increasing total of delinquency.' Whether these observations apply to our country is a matter of doubt in view of the fact that so much yet remains to be done in the field of education, industry and politics, before India keeps abreast of advanced nations like the Americans of to-day.

Indian criminality reflects the phases of all grades of civilisation and barbarism. Fiercest violence reigns among the frontier savages while the subtlest craft is the very life breath of the confidence trickster. Psychic as our civilisation has been, our professional criminals miss the scientific tools of their brethren in the west and yet the wonderful handiwork of the Indian coiner defies the complicate mechanism of the western minting machine.

Civilisation is of little avail unless it makes itself felt in the family environment which exerts on the individual the earliest and the most lasting influence and largely determines his future destiny in the world. The conditions of birth are biological in their character. The inherited pre-disposition is therefore spoken of as 'family disposition' in a biological sense. Socially it is the result of example. The lack of home training is often the curse of illegitimacy and vicious parentage is the bane of family life. The social position of the unmarried mother strips home life of its normal character and here the influence of prostitutes is particularly mischievous in the case of girls. Illegitimates are most uncared for and according to the showing of Aschaffenburg, about 35·34 per cent. of them die in their first year while only half of it represents mortality among normal children.[1] In 1899, nine per

1. Aschaffenburg, p. 130.

cent. of all the births in Germany were illegitimate and in the prison in Halle it was found that 8·9 per cent. of the criminals were also illegitimate.

Home training is similarly inadequate in the case of the issue of the poor factory labourer. While their mother and father work away from morning till late at night, the children of the poor are abandoned to the evil influences of the street. Among the proletariat, family training is often grossly vitiated by criminality, death, divorce or illicit life of either or both of the parents. According to an investigation this was the case in Paris with 306 out of 600 criminals under twenty years of age.

The habituation of children to crime is incidental to professional criminalism. Striking examples are furnished to us by Lombroso; a girl was brought up by her parents as a boy and clothed as a boy, and she took on a masculine air and wielded her knife vigorously. Another girl showing the strongest aversion to crime was made by her parents to carry the head of one of their victims in her apron for two leagues; afterwards she became the fiercest of the band. A thief was proud that his son was able at the age of three to take the impression of a key in wax. Another point of importance is that leniency of treatment in early life spoils a child against all further correction at a later day. A notorious

thief is reported to have said that after his first thefts he had many times been beaten by his father and he had seen his mother weeping bitter tears over him and that he had promised them each time to restore the things stolen to their owners but regularly without keeping his word.

Oettingen's statistics show that 'while for each five male delinquents there is only one female, there are three females to one male among foundlings. This indicates the greater importance of home training for girls. It is quite consoling to observe that in certain cases thieves and prostitutes who have become rich strive their best to give good moral training to their children.

Even in normal family life sound moral training on an adequate scale is often a rare feature. A child that grows up among thieves and vagabonds forms his range of ideas after those about him. How can it withstand the potent forces of evil suggestion and example violently acting on its mind in the most plastic period of its life. Evils of drink, immoral association, illiteracy and defective intelligence, unhinge the infant mind at an inopportune time of life and verily the impressions of youth endure the longest. Here is the culture medium for the microbe of crime to flourish and unless these neglected babes are snatched away before the influence of evil example sets in they will soon be

pushed head-long into the ditch. Save these children and you have redeemed future humanity.

Besides, it is depressing to see that family feuds which are a dangerous relic of barbarism eat into the vitals of many a home placed amidst civilising influences. None can foretell at what stir of the wind the smouldering fire of family enmity will burst into fatal blaze. In Corsica the killing of a dog resulted in no time in the death of all members of two hostile families who suddenly flew at one another and indulged in a hand to hand fight.

Families develop into clans or tribes and tribes are organised for criminal activity often on a historic background. Such tribal organisations have been the terrible thundercloud on the confines of civilised society. Lombroso gives a touching picture of the origin and growth of Sicilian brigandage in his book on 'Crime and its causes.' A reference to the criminal tribes of this country will be made in a later chapter.

From family training we shall pass on to the question of Education. The term education is ordinarily used to signify the development of the intellect. The intellect is a potent instrument, by itself neither good nor evil from a moral point of view. Its reaction on the fundamental instincts of man deserves our consideration here. Dante said 'When intelligence is united with power and

wickedness the efforts of men are vain'. 'A little learning is a dangerous thing. It breeds pride and envy.' Statistics show according to Lombroso that crime increases with moderate education while it decreases with the higher. The acquisition of knowledge inspires one with a sense of power and power in the hands of the vicious means the dangerous furtherance of criminal pursuits. It is why this author regards intellectual education in prison as a fomenter of recidivism especially as a knowledge of science may help the criminal to invent new crimes that more easily escape the clutches of law. Science has introduced in the underworld the use of the dynamite, the telegraph, cipher message and other means calculated to elude the grip of the law. An Italian bandit said that with a knowledge of the alphabet he would have conquered the world. A smattering of language may bring in the vicious influence of bad novels and criminal literature. The pride of little learning induces an unhealthy sense of self-importance and is often a barrier to humble work. Material education often multiplies the needs and aspirations of men without giving them the power to realise the same. A murderer is said to have declared that education was the cause of his ruin since it had made him prefer idleness to poorly paid labour. Intellectual wealth like the material may stir up feelings of envy and strife among the low-minded of the

scholars and often results in the offences of defamation, backbiting, false accusation and even assault and if it takes an economic turn the dangers of education will all the more be aggravated. Sometimes onesided learning is at the root of the conflict between scholars. In this country the low rivalry of the pandits is a well-known fact. Two of the pandits enter into a hot discussion of the comparative merits of their favourite poets or authors and in the course of the debate the weaker party not infrequently seeks reinforcement from the argument of the cudgel. The endless quarrels and riots of religious partisans are the outcome of a partial and inadequate learning of partisan literature.

The other side of education is represented by the fact that it acts as a civilising influence. Aschaffenburg wonders at the statement of Lombroso that 'to instruct the criminal means to perfect him in evil' and declares that not because of instruction but in spite of it the relapse takes place. The knowledge gained in prison and the training in some trade or other enable the criminal to get on better in the world after discharge. The effect of lack of education on crime is clearly discernible in the increase of percentage of illiterates, illegitimates and foundlings among the prison population. If elementary education has no appreciable effect on criminality this much is certain that illiteracy prevails far more among criminals than in the normal population.

If education leads to progress the advocate of scientific or political advance may come into conflict with the laws of inertia and social conservatism and may give rise to a new class of crimes. Men like Galileo have suffered martyrdom at the stake of popular indignation for the simple reason that they were the exponents of scientific ideas beyond the belief and comprehension of their time. It is the awakening of the intellect that has preceded every step of modern progress and at each turn the passing fiend of popular superstition has claimed human sacrifices. This indicates that whatever perturbs the calm stream of social life provokes a reaction against the agent of disturbance, be the ruffling advantageous or otherwise.

Above all one thing is clear that education changes the character of criminality and tends to reduce violence to a minimum. The effect of education on crime may be different in various countries. What is generally patent is that homicides decrease with the growth of education. Lombroso is of the view that political, commercial and sexual crimes increase respectively with the development of human intercourse, business and cerebral activity. Certain crimes like forgery, fabrication of evidence etc., require a modicum of education for their possibility. Learning exercises the intellect and makes the criminal prefer the smoother and more concealed method of

cunning to one of violence and difficulty. By setting him athinking it stems the sudden outbreak of the criminal impulse. Riot, dacoity, arson and robbery betray thoughtlessness. Physical strength looms large in the eye of the illiterate and the formation of gangs appears to them as a source of immense strength. It is mainly among the illiterate section of the people that nihilists and anarchists often get their recruits.

In connexion with education our attention easily passes on to consider the influence of the Press which knows no bounds at the present day. To the normal public the evil effect of the newspaper lies in the dissemination of seditious ideas and to the abnormal, in the glowing publication of trials and other accounts of criminal and like antisocial affairs. A constant reading of these stories in journals makes the people apathetic by inducing an impression that stabbing, swindling and sexual crimes are matters of daily occurrence. The delineation of tyrants as heroes deflects imitating tendencies into the channel of criminal conduct by raising in abnormal minds a series of seductive mental imagery. Constant recollection of criminal adventures incites curious men to imitate the devices of which they read. In process of time success in them is likely to tempt men to follow devious courses whenever opportunity offers itself. In 1866 two young Frenchmen strangled a tradeswoman and when arrested

declared that the crime had been suggested to them by reading a novel by Delmont. Some offenders are said to commit atrocities simply with an eye to newspaper notoriety. Portraits of criminals affect the moral tone and the good taste of the public. The influence of the press is after all mainly suggestive.

Next we shall consider the question of religion as a factor in criminality. Religion as signifying the worship of the one Being that is the seer and the mover of the inmost soul of man must engender feelings quite antagonistic to criminal tendencies. It is a sense of the duty of submission to the incontestable authority of God that keeps the poor from slipping downhill into crime. The maxim is 'The people must be brought to God if we want justice and order to reign.' While the view of the spiritualists is that irreligion predisposes men to crime, most of the criminologists contend that it is not at all correlated with criminality, and that wherever there is an apparent connexion according to statistics the inference of causation is quite unwarranted owing to the intermingling of various factors of great complexity. Furthermore Bonger indicates that in Netherlands where external piety is abundant statistics show a high figure for crime and Ferri found only one atheist in a group of 700 criminals; seven devout prisoners having found in religion an excuse for their crime. The Indian

professional thief worships Kali or other goddess because he cherishes a traditional and superstitious belief that his attempts will thereby be crowned with success. Indian statistics make a classification of criminals according to their religion, which is from our standpoint without the least significance. For it is merely ascertained to which of the faiths a person belongs by birth, and not whether his membership therein is more than purely a nominal one and whether religious teachings have influenced his thoughts and actions. In the case of the so-called religious prisoners it is clear that they are thoroughly ignorant of the spirit of true religion. Irreligion need not be a direct cause of any kind but its suggestive influence on the illiterate criminal is undoubted. Aschaffenburg says that the commission of any serious crime is a proof that the perpetrator has lost his touch with religion. Can the so-called devout prisoners of Ferri be said to have a true understanding of religion? He asked a murderer, 'Did you not fear the wrath of God?'; the reply was 'but God has never punished me yet': Ferri 'But you will go to hell' M:—'O, I may go, and I may not,' and another prisoner said 'We shall see whether we shall be punished when we are dead.'[1] What is it but the response to habit if two foes about to fly at the throat of each other lower their clubs at the call of the church bell

1. Lombroso, p. 138.

and pray and again renew their combats? If it be said that there are fewer criminals where atheists abound, that may be due to two reasons, *i.e.*, (1) they are found mainly among the highly educated who are placed beyond want in virtue of their education and intelligence and a free disposition to crime is wanting in them and (2) a true and wide knowledge of science tends to diminish criminality.

Any one who has pierced beneath the veil of ritual to the idea of a God who is Love and any one who has got a true conception of Him in His relation to men of all sorts and conditions will naturally lean to the principle of toleration. This won recognition in the western world only during the last century, although it appears to have dawned on the Indian mind as early as the days of Vedic philosophy. It is intolerance of foreign beliefs that has been the basis of much criminality ever since the birth of the great religions of the world. It is a venomous product of blind adherence to the dogmas and externals of a single faith unrelieved by anything like a comparative study of the principles thereof with those of any other.

Religion in its thousand forms has been a potent force all through history. In primitive society it is identified with race and written authority. Are the Israelites alone the sheep of God? Why should Pharaoh be persecuted?

Is it not fancied heresy that led to the crucifixion of Jesus Christ? The pages of ecclesiastical history are red with the blood of martyrs. Harrowing it is to refer to the burning statues of Tudor history or to the terrible fires of the Portuguese Inquisition.

Intolerance might have been necessary at a time when the stability of the social or political fabric was threatened by the prevalence of religious faction in the community but its persistence when of little avail is a real danger to social unity. A vestige of it appears to linger wherever the State identifies itself with one religion. Some of the English Judges like Lord Hale have regarded Christianity as the national religion of the British Parliament. About the seventeenth century Hale states that Christianity is part and parcel of the laws of England. Gladstone confirmed this opinion in 1863 and Lord Mansfield laid down the dictum that 'the essential principles of the revealed religion are part of the common law.' In virtue of these dicta blasphemy and profanity came to be regarded as offences at common law. In pursuance of the English legal precedent, American courts have expressed the opinion that the people of the United States are a Christian nation and that the doctrines of the Christian religion form part of the common law of the various States. Professor Parmelee shows that this runs counter

to the provisions which guarantee religious liberty, in the constitution of the United States. Even to-day laws against blasphemy restrict freedom of speech on religious grounds and laws enforcing the observance of the Sabbath restrict freedom of action by prohibiting public sports, theatrical shows, and even barbering, with certain exceptions. As regards conscription religious objectors not belonging to any organised Church were not to be exempted from enlistment. Parmelee tells us that France is the only democratic government which does not recognise any religion as national.

Blind adherence to dogma has nowhere been carried to an extreme as in the imposition of the Muhammadan religion on the conquered. The 'Koran' or the 'sword' was once the watchword of Muhammadan proselytes. However, it appears that in India even when the Mogul empire was in its zenith, Akbar followed a policy of reconciliation between the Mussalman and the Hindu. Although Muhammadan invaders carried fire and sword throughout the land, no government of theirs appear to have treated the infidel as a criminal.

If the followers of a religion fail to get hold of the true spirit of its tenets or if a faith is in its nature intolerant of other creeds or if external forms persist while the spirit has flown away, religion becomes corrupt and then it is a strong

factor in criminality. When religion is degraded to mere forms, the ministers thereof attribute to them all the significance of the spirit. They idolise the forms and champion their losing concern with a vengeance. They go out of joint with reality and their moral ugliness is all the more repulsive. For instance Jainism was pre-eminently an ethical system. Love to all creation was the ideal of the Jains, but when corruption crept into it about the sixth or seventh century its leaders never shrank from atrocities in pulling together the last shreds of a dying faith.

Many a life has been sacrificed on the altar of written revelation. The conflicting interpretation of the Vedas has been at the bottom of all the bitter controversy between the Vaishnavites and Saivites of this Presidency. The same was at the root of Dayananda's religious movement in Northern India. Even to-day the deep-rooted traditional belief in authority is not only a formidable obstacle to scientific progress but the centre of dissensions between the champions of the passing civilisation and those of the new.

A worse feature incidental to a decaying faith is that it is made the medium of rivalry for worldly honour and preferential respect. Who is entitled to receive the prasadam first in a temple and who should occupy the foremost rank in reciting the sacred songs behind the deity in procession? Settlement of these and the like

questions often involves the loss of several lives of both the parties especially in the quarrels between the Tengalai and the Vadagalai Vaishnavites which furnish us with a standing example of this phenomenon.

The original saintly founders or revivalists of religion worked for humanity with sincere fervour and devotion and transmitted to their successors the highest reverence of the society as the favoured media of communion with the Almighty. In process of time the succeeding generations of ministers missed the fervour of their great predecessors and coming down from their soaring spirituality clung fast to the position of worldly honour that tradition bestowed upon them. At the present day their lowness and ignorance feed fat the flame of their self-conceit. Blinded by pride they deem themselves to have realised the ideal, and quite contrary to the spirit of those that have really done so, become exacting in their self-interested demands on society. Their persistence in worldliness leads them into ways of wickedness and rascality. Consciousness of their position as religious leaders exercises only a seductive influence; it never puts them in mind of their high duties but tempts them to set a great store by their exclusive privileges. They let slip the kernel but lick the shell of spirituality whilst their godfearing disciples or followers hardly stint their formal respect for them.

While the early saints cared for Life but not for the world, their economic position was strengthened by the material offerings of their devout followers, and the institutions they established became rooted in the soil; but when their successors turned their back upon them and proved untrue to their high spiritual traditions, they had no hold except on the temporal side of these organisations. Naturally they made a tool of religion to pander to the tastes of the low and slipped straight into sensuality and Mammon worship. They lost hold of the essence and concentrated all importance on mere forms and rituals. They flared like whitewashed sepulchres and defiled the sanctity of institutions by abusing them in the service of lust and greed. Their refuge lies at the feet of hypocrisy which tend to plunge them deeper and deeper into the slough of ignorance, sloth and sensuality and in their homes the wicked and the violent find a welcome resort.

When corruption comes to ahead in these institutions social reaction sets in sooner or later and sweeps away the whole system of villainy and hypocrisy. This is clearly illustrated in European history by the fall of the Catholic Church from its ideal and the rise of the Protestant reaction against it in the sixteenth century.

The mediæval corruption of Catholic doctrines is best indicated by the worship of the Madonna

of Hatred invoked to procure the death of the enemy. The fall of the clergy broke the moral backbone of the poor and the ignorant. Mammon levied his fine for every offence. 'Seduction, adultery and incest were pardonable sins.' The murderer was absolved by confession and payment, and the forger could purge his conscience by paying the Church 32 francs and 80 centimes. The worst feature of the Catholic Church was that some priests granted temporary licenses to commit crimes. For instance, a quarter cask of wine to the Bishop's Officer gained a person license to commit fornication. In the sixteenth century there was a scale of taxes for crimes published by Pope Leo X. The murder of a priest was condoned by a payment of 7 gros and that of a layman by a fee of 5 only. Four francs absolved a layman from the charge of adultery. 'Under John XII incest with sisters or mother cost 40 sous.' Lombroso also states that till 1868 there was a papal bull that dispensed with the necessity of repaying unlawfully acquired money upon payment of certain sums to the Church. Above all, the ecclesiastical courts were for a long time a bar to the reaction of secular tribunals against criminality.

Although the Hindu religion did not go to the length of licensing gross immorality, it has been prostituted by the priesthood for secular purposes and the moral fall of many a matam has

a sad tale to tell. Monasteries grew rich and the ascetics in charge of them became drunk with the sense of worldly power. Succession to the gaddi of a priest is at present fought for more bitterly in courts of law than for succession to the throne of princes in battle. Thus the mutts and religious institutions have become the hotbed of all kinds of violent and deceitful crimes.

In this land where every form of religion has had its traditional home it is not surprising if certain lower forms of it are tainted with primitive barbarism. For instance Shakteism in its pure form is the worship of Providence as the mother of creation. In its lower form it is the creed of the thieves who worship goddess Kali for the furtherance of their ends. Demoniacal orgies are associated with the worship of Durga and Kali by the savages. Furthermore Shakteism has in certain places degenerated into a gross physical form of a most loathsome character. It has even become a by-word for sexual excesses.

Animistic beliefs assume such dangerous proportions at times that murders are committed for trifling motives. Animism seeks by means of magical incantations and charms to ward off or foretell physical disasters. Nowhere among the civilised countries does superstition wield such a vast influence as in this land. Man's life here is often caught in a tangled web of disorderly prejudices which have been the source of many a crime.

Superstitious frenzy has led to murders of children in imitation of the great. Sati and infanticide were terrible crimes which have once for all vanished, thanks to the efforts of Lord William Bentick and his successors. Unreasonable belief gives clue to a vast number of incomprehensible crimes. Striking instances which Aschaffenburg attributes to Russia may be found in India. He refers to the sacrifice of human beings in times of famine and pestilence, the murder of magicians and witches and of children with physical deformities, the opening of graves for talisman deemed useful to prevent the return of vampires and the rape of innocent girls.

In this country religion serves as a cloak for all sorts of villainies. The absence of the Poor House may be a bar to the enforcement of the laws of vagrancy; but if European laws in this respect were introduced into this country the number of criminals would swell in an enormous degree. The traditional indiscriminate charity of the country is mainly due to the current popular belief that the feeding of idle Brahmans and mendicant sanyasis will procure one, salvation or a high place in the other world. The confidence-trickster, the poisoner, the murderer and the thief hide their weapons under the reddish brown garb of the sanyasi. Nothing is more perplexing than the problem of the beggar population which furnishes a wide recruiting ground and a safe retreat for criminal gangs.

India has been the rendezvous of all the great religions of the world. The suppression of Buddhism, the struggle with Muhammadanism and the stemming of Christianity have been at each step productive of criminality.

If any element of disunion be wanting in the domain of religion, caste comes in to supply the deficiency. Communal quarrels prove a fertile source of collective delinquency and often give rise to anti-social acts which may not come within the technical limits of Criminal law. Caste has been a fomenter of strife since the days of Smrithis and Puranas. Smrithis have accentuated the differences among the various sections of the community to the advantage of the sacerdotal class. The puranic extirpation of the Kshatriyas marks the beginning of caste dissensions in Hindu history. The corrupt priests of the country unscrupulously avail themselves of the popular beliefs in written revelations by interlarding the originals of sacred books with texts purporting to unduly glorify their own class or any other community ministering to their cupidity. It appears that whatever might have been the causes of the Great Indian Mutiny, caste had a patent share in it. In the face of caste, religion as an element of social union sinks into insignificance. It implies in reality a subdued condition of internal warfare between community and community; the smouldering embers may at

any time burst into a blaze. It breeds feelings of alienation especially when the urchins of a higher class look down upon the cultured of a lower one. What places the one above the other is not education nor wealth nor good quality but mere birth. Almost all the lower classes wait for opportunities to enforce entrance into the citadel of the higher. If caste is not flexible by tradition it is sometimes rendered so by gold. The absence of history is really a consoling influence so far as this is concerned. The rules about diet and contact are not so difficult of relaxation as those in respect of marriage. 'The whole fabric of Hindu society rests upon caste and nobody can easily kick over the connubial traces.' This should be borne in mind when modern ideas introduce a disruptive force in the Hindu family. The ancient cosmopolitan ideals of our religion have been lost sight of and we present the spectacle of a people rent asunder by mutual dissensions divided into thousands of castes and sub-castes, sects and sub-sects with all spirit of nationality crushed out, weak in body and in mind and slaves of circumstances. The political aspect of caste is painted by Risley in these terms 'Caste would provide the party in power, the party that had spoils to divide with what Americans call a machine surpassing in efficiency the wildest dream of the most ingenious wire-puller. Men could be compelled to vote solely by penalties compared with which the papal interdict

that drove an emperor barefoot to Canossa was a clumsy and ineffectual instrument.'[1]

Individual habits of life or national customs may be reckoned among the social factors of criminality. Evil environment turns the occasional into habitual criminal. In certain countries gamblimg is a national custom. Even the poorest person takes part in the little lottery. It is stimulated in this country by the tendency of people to rely on chances. It receives mention as a customary game in the Puranas and Smrithis. In the Mahabharata the troubles that led to the Great War originated in the gambling of the princes. In Manu this is described as one of the royal pastimes. The gamblers commit thefts and frauds to find money with which to bet on the horses. Gambling distracts men from legitimate work and brings in disappointment which sours the temperament and makes it prone to crime.

Notions of morality are a good deal dependent upon commercial ideals, which vary from society to society. Consequently if primitive social habits and customs clash with the provisions of modern criminal law, crime at once comes into being. For instance, slavery was not regarded as a crime among the Greeks or the Romans or other ancients. Although it continued undisturbed till the middle of the last century, its recent abolition has made its practice criminal.

1. Risley, p. 286.

Whether marriage has any effect on crime cannot be decided by means of statistics alone. It depends upon the mutual influence of husband and wife. If the marriage is one of love, a cultured wife may occasion a reduction in the criminality of her husband, but if she is weak-minded, she submits slavishly to his suggestion. If it is not for love but for reasons of prudence, it is often a source of misery. The husband who is economically superior may wield, if he is a bad character, a great demoralising influence on his wife. If sexual love has power to mould character it is clearly discernible in married life. The occasional criminal realises a sense of responsibility for the welfare of his beloved wife and children. Sometimes it may also occur that a poor husband in the agony of anxiety for his charming wife and children resorts to crime with an economic motive. In the study of the statistics of a country in respect of this factor precision can be insured if the married and the unmarried criminals be compared at a certain age common to both. In the interest of comprehensiveness the statistics of the same classes among the non-criminal population should also be contrasted.

Differences not only in the extent of criminality but also in the nature of offences committed should be investigated. In Austria the unmarried and in Hungary the married show a higher percentage of criminality. In Italy, statistics

relate to persons over 14 years of age and yet present the same phenomenon as in Austria. There must also be a division for sexes since women exhibit a much lower figure and do not equal the male population. This has been made in France, Netherlands and Switzerland, and in India where statistics show a higher figure for the unmarried among the males. This is also in a way explained by the leniency of treatment meted out by courts to married men. Another fact that is exhibited by Austrian, Italian and French statistics is that married men and widowers who have children show a lower figure than the childless among them.

In Europe the position that bachelors commit more crimes has an exception only in the far greater criminality of married men between 18 and 25. But the crimes committed by the married are mainly economic in character. For instance, in respect of fraudulent bankruptcy married men of all ages show a higher percentage than the unmarried. The influence of social environment is best seen in the nature of various classes of crimes in which the married or the unmarried or those without spouses take the lead. Wherever active efforts and recklessness are required there the unmarried overtop the other two classes (except for the period between 18 to 21) as in assaults, homicides and rebellions. 'Robbery, extortion, forgery and counterfeiting are mainly

committed by the unmarried.' Married persons are more often guilty of being accessory to theft or receipt of stolen property, procuration and violation of secrets, etc. In sexual crimes like incest and abuse of confidence the spouseless lead the rest. In rape, the unmarried youth prevails and in insults, the married surpass the rest. Spouseless persons lead in homicides and next come the young men.

Among women the married show a higher percentage of general criminality than the unmarried. In theft and embezzlement the unmarried outdo the married who show a bigger figure for the passive crime of receipt of stolen goods. The widows and divorcées are more criminal than the rest especially in procuration, incest, insult and offences against children.

Married men when young show a higher percentage because of their early marriage which gives rise to material cares of maintaining the family. The high figure for insults is due to congestion in their tenements: a small house used by a number of workmen affords a permanent source of disputes. The spouseless come more into touch with the economic and social life of the world than other women. Their high criminality is also attributed to the absence of the moral influence of married life, and indulgence in alcohol in western society. Women in retired home life are not guilty of political crime.

What presents the greatest contrast to home life is military life. As regards the effect of militarism upon crime there is a conflict of opinion. However, it is not without its bad effects. Militarism occasions the assembling of young recruits snatched away from their legitimate work sometimes quite against their will by taking advantage of a moment of inclination to enlistment: they are torn off from their homes at a time when they are likely to yield to temptations and develop bad habits. As Bonger puts it, many of them have not got the least taste for military life. Some enter service at the instance of their parents while others are attracted by the glamour of the military uniform or other illusory privileges. But they are all disillusionised at a time when they cannot desert the regiment for fear of further penalties. How can these men feel a real sense of duty in their services? All the evils of congestion of population creep into the army and exercise a demoralising effect on impressionable and half-educated idle youths kept together only by constraint. The high criminality of the soldiers estimated to be 25 times as great as that of civilians may be explained by the existence of a number of offences of which the civilians cannot be guilty, by the far easier detection of offenders in a small corporation as a regiment and by the fluctuation in the number of soldiers every year. Sometimes it so chances that the delinquency of the soldiers shows a smaller figure than

that of the civil population on account of the enforcement of strict discipline in the army. If at all there be any moralising factor in the army it is only the cultivation of obedience and orderliness through fear of punishment. There is also the extreme of it which is likely to reduce men into machines that may be handled mechanically. This may engender a tendency to abnormal suggestibility. While in this manner freedom of thought is once for all ruled out and poverty is absent, violent passions are permitted their full scope. Even in times of peace garrison life in big cities facilitates the contraction of vices and habits, which tell upon their moral and physical health for life.

The influence of war on criminality is viewed in two ways. The reduction of crime in times of war is due to two circumstances.

(1) Generally those inclined to commit violent deeds like murder and theft are enlisted in the service of war and find an outlet for their tendencies in killing and plunder.

(2) The detection and punishment of the criminal does not proceed with so much zeal and effect as during times of peace.

There may be a moral effect in war if it is pursued by a whole nation for a noble purpose. Apart from orderliness, obedience, punctuality and promptitude that are promoted by military

discipline, war integrates the discordant elements of a nation and impels them to pursue a single common ideal. These effects are not present where a war is carried on for economic purposes and is not liked by the majority of the people. Not to speak of economic evils, its demoralising tendency needs no proof other than the recent international war with Germany. War engenders a spirit of lawlessness and violence in the whole nation. Aubry speaks of it as a 'neurosis, a contagion and a homicidal insanity.' What is condemned in ordinary times as the most heinous of offences becomes a matter of imperative duty in war. Ravages and burnings become the order of the day. Accustomed to fighting, soldiers feel little aversion even in times of peace to shed blood if their feelings of vengeance and jealousy spur them on to it. The effect of war on the nervous system is spoken of as psychoneurosis by scientists of the day. The neurosis persists even after the closing of the war and issues in crimes. The untold atrocities committed in the course of the great world-war of yesterday prove the excitement of limitless violence, lawlessness and cruelty incidental to international warfare. Anyone has but to refer for examples to the ravishment of Belgium, Northern France, Poland and Servia and the massacre of Armenians in Turkey.

The excesses of the German war indicate that hostilities bring down the civilised to the level of the

savage. Once the bonds of society are broken, the civilised and the savage meet in a common arena.

Again, the after-effects of war retard the progress of civil society. Men discharged from the army find it difficult to adjust themselves to normal conditions, for there is a loss of wage-earning positions. Further, the life of forced idleness alternating with unusual activity as is experienced in the army is opposed in nature to a life of regulated work and steady discipline, characteristic of times of peace. Military life puts an end to economic self reliance and breathes a spirit of recklessness. At any rate two of the great evils of army life are sufficient to ruin one's health, *viz.*, alcoholism and licentiousness.

The right of conquest is an unhappy power which leaves the conqueror under a heavy obligation to repair the injuries done to humanity. The instability that even a small war introduces into the economic world tempts men to adopt criminal modes of acquiring property. Finally war is a serious hindrance to the unification of mankind into a single coherent and social organisation in which there will be a vast reduction of criminality.

This subject leads us naturally to the consideration of the political basis of crime. Whether an act is a crime or not is determined often by the form of the government. In a monarchy the rights and privileges of the sovereign are sought to be protected with greater care

than those of the people. If a State is oligarchic, then the interest of the ruling corporation will best be cared for and the penal law will be swollen with offences against the sovereign. In a democratic government the penal law will aim at the protection of the whole community.

The State may be an indirect cause of crime by neglecting its functions in society. If it does not care for public health it gives rise to diseased organic conditions which are a fertile source of criminality. If it does not regulate the consumption of alcohol it may be viewed as passively encouraging the evils of alcoholism which may develop into serious crimes. If it introduces restrictions on marriage, sexual crimes may be the immediate result. Excessive legislation increases opportunities for the violation of laws. The absence of checks and safeguards against dishonesty in the constitution of the State and the indifference of the public thereto are mainly instrumental in introducing corruption and inefficiency into all the departments of government including the Police and the Courts of Justice. 'Nothing can be more disastrous to the effective suppression of crime than the weakening and corrupting of the Police agency which is the physical arm of the State for enforcement of the law.' The evils of a corrupt police require no mention. They will be tempted to befriend members of criminal classes

for information. The defects in the jury system should also be remedied. The maladministration of civil law is sure to give rise to dissensions and conflicts between some at least of the litigants and pave the way for crimes against person or property or both. Among other political causes may be mentioned the abuse of public offices for self-aggrandisement, the domination of the worst elements in the State, inefficient administration of criminal law, improper treatment of offenders, horrors of the prison house, uncertainty and undue severity of law, conflicts of political groups and accentuation of partisan interests as in election quarrels, and lastly governments between parties and parties organising themselves as governments.

PROSTITUTION.

Lastly we have to consider the effect of organised vice on criminality. The subject of prostitution lies midway between economic and other social factors. It is also on the borderland between crime and normality. Though rooted in sex relationship its apparent aspect is pecuniary. It is a temporary sale of one's body for the sexual use of another. According to Guerry 80% of female criminals under 30 years of age in London were recruited from prostitutes in a certain year. Economic necessity may be met in the case of women by resorting to the life of a

prostitute ; whereas every young man who wants to live on the wealth of others can only become a vagrant or enter on a dishonest career. A good girl would no doubt rather starve than resort to a life of illrepute in the teeth of social condemnation ; but certain women suffering from weakness of mind or neurotic defects, fall a prey to the giddy pleasures of the eye and yield to the temptations of gaudy dress and an apparently idle life in comfort.

Modesty is a great preventive of crime based as it is on respect for public opinion and its loss is likely to dispose one to indecent conduct. It is merely the seductive impressions of sex life obtained at an early age that corrupt young ladies and foster in them the development of the sexual passion. In some cases girls feel forced to take up the life of a prostitute in order to avoid the risk of finding good husbands after once having swerved into a chance sex delinquency and conceived before marriage. This might be mainly the result of a relation of love with one who caused disappointment by suddenly forsaking his lover in hopes of a better chance elsewhere. It is likely to embitter a poor girls' feelings and make her reckless as to the mode of life which she should adopt. Women suffering from alcoholic heredity or used to intoxicants when young often develop a craving for low pleasures which may land them in bad life.

Some writers regard prostitution as the equivalent of criminality among females. It is said to be a safety-valve of feminine delinquency. Organically the prostitute shows a greater number of marks of degeneracy than even the female offender, although these symptoms are fewer among women than in men. This view is attacked on the ground that though criminals and prostitutes are social parasites, the business of the latter implies a mutuality of aid with no conflict of individual interests. It is regarded in the light of an occupational activity, ever so base it may be. No doubt under certain conditions prostitution may be deemed criminal, but as an institution it cannot be put in the place of delinquency although it is, when unregulated, a strong factor in the production of crime. The worst of diseases that carry germs of destruction down to several generations are the physiological outcome of promiscuous intercourse. Prostitution induces ideas of crime against property in the minds of visitors of brothels. Sexualjealousy among them make these infamous resorts scenes of violent scuffles, robbery and even homicide. These homes of ill fame are the rendezvous of all unworthy ravers and are hence the hotbed of all vices and crimes. The pernicious trade of the procurer flourishes best where prostitution is rife.

In this country there are two classes of prostitutes, the one being recruited from the

poor, ignorant and low-born and the other consisting of dancing women who are the corrupt members of a time-honoured institution, which is now a nursery of sin and diseases. The nautch girl is allowed to display all her charms in temples and other public places where she may sow the seeds of temptation to the young and the weak-minded. The dancing women have proved the ruin of many a rich lad. They were originally an order of female ascetics or nuns dedicated to the temple service. These virgins led a chaste and pious life at the beginning and they were mainly recruited from the weaver caste. In later times although these women degenerated into the most scandalous set of prostitutes they did not lose their hold on the temple. Temple service necessitated their training in the fine arts of dancing and music. Even now the custom prevails of celebrating a formal wedding of the virgin daughter of a dancing girl to the deity of the fane precedent to starting her life in the customary disreputable manner.

The austere restraints of Indian home-life gave the young couple little scope for freedom of movement with one another, and probably impelled youths to seek freedom of intercourse with courtesans. Owing to the artificial nature of the Indian marriage true love sometimes springs up in the self-chosen relation between the paramour and the prostitute. The latter becomes

a concubine and rival to the real wife. The concubine and the wife compete with each other in administering drugs and charms to the hen-pecked husband. This results in ruinous hurt to the physical frame of the lover.

Aschaffenburg says that history bears strong testimony against the suppression of this most ancient institution which is a necessary evil, as it serves to keep the chaste from the unchaste. Louis XI of France attempted to abolish it altogether, but within a year of his prohibition, clandestine prostitution began to raise its head everywhere, so that the sovereign thought it advisable to set apart certain streets for the use of harlots. 'Flogging, the pillory and capital punishment proved of no avail in repressing the evil.'[1] The tendency to immorality can hardly be suppressed. A great French writer once said that wherever people congregated it was as unavoidable as sewers or cesspools. A German writer says that the annual number of cases of venereal diseases in the German Army equals a third of the number of men who were wounded during the Franco-Prussian war. In civilised countries concealed concubinage is far more prevalent than the registered one.

There are two conflicting views as to the reason why girls take to disreputable life. Economists like Hirsch lay the blame on social

1. Aschaffenburg, p. 90.

conditions and restrictions on marriage; while Ströhmburg and Lombroso attribute it to degeneracy. Women idle and criminally inclined find in it a good occasion for robbing infatuated men; but these thieves should be distinguished from those of the non-criminal passive type who entertain no idea of making away with the property of their visitors. Even this class being largely of defective mental development might have resorted to crime in the absence of prostitution. Apart from these there is a division of poorly paid women labourers who pursue illicit ways of eking out their earnings. In certain cities where unmarried immigrants like students and businessmen live single in hired rooms, domestic servant-maids find good opportunities of wheedling them into an infamous career. The contagious influence of prostitution should be avoided. If a prostitute lives beside a workman, the external glamour of her dress and life may exert a prejudicial influence on the minds of the labourer's infant girls and tempt them to vicious conduct. Successful resistance to temptation is possible only to an unusually strong character. Hence the necessity of segregating harlots of all sorts from people who pursue regular family life.

With regard to direct criminality the prostitutes violate police ordinances, which, however, are not included in the criminal registers of

certain countries like Germany. It is procuration that should be most severely condemned as a crime eluding the grasp of criminal justice. But for the activity of the so-called 'protectors' many a girl would not have been enticed into prostitution. They carry on their trade so secretly that they are arrested only for offences which they happen to commit during the pursuit of their trade. Procuration has supplied the world with the greatest of criminals. The repression of pandering is therefore more essential than even the segregation of disreputable women. Complete abolition of prostitution is inadvisable as it would undermine the moral life of the people and as it would practically come to mean abolition of regulation and allowance of full scope to clandestine concubinage.

Socialists like Bonger and Hirsch hold the view that it is the inevitable compliment of the existing legal monogamy mainly as a result of economic conditions. They say that bachelors resort to houses of ill-fame in greater numbers than the married. Even some of the married men do not want to attach themselves to one woman for life owing to differences in tendencies. In many cases the marriage is not contracted on account of inclination but with a pecuniary motive. Therefore in cases where there springs up an antipathy between the couple a divorce is next to impossible from motives of expediency

or owing to the difficulty of obtaining it at law. In the light of the fact that for the mass of mankind the satisfaction of the sex instinct is a necessity, prostitution is resorted to as a correlative of marriage. Inability to marry on the part of the poor drives them to immoral life.

It is very hard to decide to what extent prostitution contributes to crime, for there is hardly any mention of it as an occupation in criminal statistics ; where they mention it they do not represent the real state of things or the real extent of it. The practice of prostitution causes a loss of feelings of honour and the young man who is addicted to it sees in a woman only a means of satisfying his lust. His conversational material consists in filth and obscenities ; his association stifles every noble feeling in him, and he boasts of things which others are ashamed to talk of and this exactly represents the criminal frame of mind.

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LECTURE V

ECONOMIC CAUSES.

The importance of economic conditions as influencing criminality is clear from the fact that all the needs of man that admit of satisfaction through a material medium are said to be economic. The primal instincts of hunger and sex depend on wealth for their satisfaction at least in the society of to-day. Even an insane or diseased culprit owes his defective condition in part to his poor circumstances; if it be the result of morbid heredity it is in most cases due to alcoholism in the parents which again is associated with indigence. If crimes are the result of pathological conditions, the same are ultimately due to economic inefficiency. For instance, if cretinism is due to the telluric influence of marshy soil, is not life in the bog indicative of the lowest stage of economic existence?

Even crimes against the person are indirectly connected with economic causes. A murderer commits his dastardly deed for filthy lucre or from motives of jealousy or revenge. Jealousy arises mainly from discord in family matters and sex life stands in most cases on an economic footing. If revenge takes its rise in self-conceit,

what is it due to? It has its origin in social differences springing from the contrast of riches and poverty. If all men are on the same economic level, none will be more conceited than others. Historians tell us that every social institution has had primarily an economic basis and only later on it assumed a religious or political foundation.

Sexual violence is in most cases due to want of education or unequal marriage or difficulty of divorce, all of which are factors that depend upon economic conditions. For instance the maintenance of education is not possible without funds, and alms were the mainstay of students, sages and devotees in olden times. Superfluous it is to refer to offences against property. If want raises a desire for necessaries, cupidity engenders a love of decencies, comforts and luxuries. Political grievances too have really an economic substratum. Thus it is the struggle for existence that permeates all human activities in varying degrees of importance and intensity.

This was first considered in modern times in connection with criminality by Turati, a follower of Karl Mark, in his book on ' Crime and the Social Question.' His view is that if crime like any other human act is a product of man and the environment it is advisable to better the latter than strive to turn the current of human nature. As a socialist he drew part of his inspiration from the colony at New Lanark founded by Robert

Owen, where delinquency was very rare owing to the arrangement of social relations in a method agreeable to all. Hence he argues that economic advance on a socialistic basis is likely to avoid criminality or reduce it to a minimum, since with better order, culture and material welfare, even the small percentage of pathological delinquency would disappear. Physical conditions are only an occasional factor in the eye of the socialist. 'A man does not become criminal because he is cold, but he who is cold becomes criminal if society does not provide him for the needs born of the cold.' [1]

We already referred to the contest between Ferri and Turati. To be brief Ferri's view is that only crimes against property have relation to economic conditions; that sexual offences would remain unaffected, if not encouraged by prosperity, and that education can little influence organic defects. Criticism of this view may be gathered from various parts of this lecture. The only remark that we can offer respecting the socialistic theories is that they do not properly value the contribution of individual differences to criminality and that they do not realise the impracticability of arranging human society permanently on a socialistic basis. Of other writers who have tackled the problem Dr. Battaglia and Dr. Colajanni deserve our attention.

1. Bonger's Economic Conditions and Criminality, p. 213.

Dr. Battaglia discusses the ætiology of crime in the spirit of an economist although his treatment of its causes is bio-social in its method. The starting point of economics is the existence of human want and this author says that criminality represents the effort to satisfy the delinquents' wants when it clashes with social interests. He classifies the factors of crime into crimogenous and occasional. The first group consists of diseases and defects of development and nutrition, improper education, cranial anomalies, physical heredity, etc., and the second comprises age, sex, religion and the like, which exert a pressure on the former for the production of crime. He associates alcoholism and bad education with poverty. Acute appetite incites to theft sometimes by bringing on a delirium. Chronic hunger and malnutrition may cause rachitis, tuberculosis, scrofula, etc., or a predisposition to these diseases. He attributes the cause of unhappiness of both the rich and the poor to the fact that while the latter vegetate in the blackest misery the former are immersed in idle luxury, and suggests a remedy that the total product of labour should be divided among the workers and not among the capitalists.

Dr. Colajanni while favouring the theory of psychic atavism attaches great importance to economic conditions. He deals with them in

their static and dynamic aspects. In modern society constituted as it is, the thief calculates the chances of the honest and the dishonest profession and chooses the latter because it is more lucrative than the former. 'A London pickpocket gets £1,500 a year on an average while the misery of those who strive to earn an honest penny is indescribable.'[1] If the criminal occupation is risky, the robber receives encouragement from the fact that offenders six times the number of those in prison are quite safe outside it. He is perhaps inspired by the spirit of the proverb 'which of the two is cleverer, the thief or the watchman?' Thus poverty has a direct effect on crime. Indirect influence is exerted through war or the state of the present industry, prostitution, vagrancy, revolution and sometimes the kind of education of the day. Idleness is an offence because the idler does not collaborate in production either materially or intellectually while he claims a share of it for his maintenance. Prostitution according to this writer has its origin in poverty. Education cannot arrest the hand of crime because its efficacy pre-supposes a certain level of material well-being. The maximum of stability and the minimum lack of proportion in the distribution of wealth is the best preservative against crime.

1. Bonger, p. 22.

The difference in views between socialists and sociologists both of whom recognise the importance of the economic factor is that while the latter have the ideal 'to every man according to his capacities and to each capacity according to its work,' the former espouse the principle that 'each shall work according to his faculties and strength and receive according to his needs.'[1] While the first ideal if translated into practice will bring about the existing differences sooner or later, the second is based on a conception of things which it is very difficult to adopt in a lasting manner on a large scale throughout society. While the positive penal school aims at progressive improvements the socialists want to get everything more or less at one blow and they attach too little value to what is within reach. Those who advocate the policy of changing the structure of society base their views on the evils of capitalism and modern methods of production. They really attack the institution of private property which is the foundation of the modern social fabric.

We shall briefly attempt to see how economic conditions determine the nature of social relations which are directly or indirectly responsible for criminality. The struggle for existence is primarily carried on in communal groups called the family, the clan and the tribe, etc. The members

1. Bonger, p. 175, 176.

of any of these, say a family, originally produced what they required for their own use, and the nature of production was determined by the nature of their physical environment; for instance men in Siberia could not be agriculturists while any people who settled in the Gangetic valley could not but become tillers of the soil sooner or later. With the expansion of the community, production necessitated allotment of work and the manufacture of tools in the interests of efficiency. When the means for the same were developed, they yielded a far greater quantity of material than was required for the consumption of the group. The contact of different societies producing in excess led to the exchange of their surplus commodities. With this there arose the need for a standard of exchange value. In course of time people hit upon metallic money as the best medium for the purpose. When the law of demand and supply came into force, every commuity began to produce far in excess of its requirement with a view to meet the needs of others. In order to facilitate exchange, commerce came into existence and with it a class of men who bought and sold with a view to profit. The extension of trade led to production on a large scale which in turn opened the way for specialisation in every branch of it. With economic advance of this sort, 'men entered into fixed necessary relationships corresponding to a definite

stage in the development of the material powers of their production and the sum total of these relationships formed the economic structure of the society.'[1]

The economic structure of ancient Hindu society was determined by caste, since to each class a definite occupation has been traditionally assigned with a view to strengthen the division of labour. Differences in the nature of the professions led to variations in social rank. Owing to the principle of exclusion in matters of diet and marriage these distinctions became rigid and stereotyped. The chief defect of the system was that it fixed almost absolutely the supply of any kind of labour and that the scope given for the play of competition became limited. Many persons who were useless for one kind of work but might do better in some other were not allowed to pursue the latter. The merit of this arrangement was that every one found a place in the social order. Dr. Morrison states that the reduced criminality of India was due to the stability of the economic position of the individuals insured in caste organisation. However, this institution hampered the social, political and intellectual life processes in general. Based on the diversity in the mental value of functions there persisted a hierarchy of castes. The whole course of a man's life moved in a fixed groove as

1. Bonger, p. 249.

he must through life eat, drink, dress, marry and give in marriage in accordance with the usages of the community into which he was born.

In a society where the violation of caste rules was an offence, it proved a fertile source of criminality whenever it received the sanction of the sovereign. According to Smrithis and other books which emphasise the importance of caste, a member of an inferior class was obliged to behave in certain modes to a member of a superior class. His conduct was regulated with great ceremony by a net work of rules and restrictions, the transgressions of which might have been severely dealt with by any prince who believed in the sanctity of such books. Politically the monarch was entrusted with the destinies of the whole society. His castemen were simply warriors; while his counsellors were educated men who were Brahmans for the most part in an Aryan community. At least in Northern India it was not the function of any other caste to question the king. The only checks on him were those imposed upon him by the higher class in the shape of religious ordinances. Intellectually a man's education was mainly limited to the study of his craft or art. He had neither time nor liberty to peruse scientific or religious books of accredited authority.

Without freedom to take part in political, intellectual or religious movements, a member of a lower class had few mental healthy interests

calculated to lift him from the temptations of ordinary life. He was hardly able to get himself rid of the vices or unworthy habits incidental to his profession. This state of things was often a strong background of criminal activity. The rigours of caste were mitigated at different stages of history by the impact of foreign invasions which evoked a temporary union of all classes against the common enemy and also by the philanthropic activity of many a social and religious reformer. In modern times conditions have changed by reason of the influence of western ideas of social and economic activity.

India is now in an economic transition. It is clear from the increase in the number of factories in the present century ; although in villages custom has not yet completely lost its hold on wages, competition is more or less the ruling principle in city life. The little progress that has hitherto been made in the line of industrial evolution was effected for the most part by European capital. Indian artisans generally work without capital, machinery and co-operation. The organisation of industry on western lines no doubt throws the individual Indian labourer into unemployment, but this is only incidental to change of conditions. The extension of industries in a rapid manner is rendered difficult owing to the inexperience and want of technical skill, business adaptability and of public sympathy

even among the educated Indians. Capital too is wanting in India and although foreign money may be attracted, care should be taken not to pay more for it than other nations. The system of small scale production still prevails in India and it is feared that the extension of the large scale may bring in the evils of capitalism. Only certain cities like Bombay fairly represent its aspects. There is a conflict of opinion as regards the effects of the industrial revolution that India is likely to experience. As Mr. Banerjee puts it, 'some believe that the regeneration of the country will be due to it; others fear that the materialism of the West will destroy the spiritual ideals of the people and deaden the finer elements in their nature.' Owing to the association of India with the world's commerce and speculation industrial revolution is likely to spread widely in this country and unless Indians avail themselves of it others will step into their shoes. Were India always to be an agricultural country it would ever remain poor owing to the inconstancy of the rain and weather conditions. The only thing that we should do in the interests of the country is to counteract the evils in industrial changes through the co-operation of the public and State protection of small industries. Political agitation of the day appears to assure the revival and maintenance of indigenous industries both in home life and for the public.

We shall have a peep at the status of the various strata of Indian society. Taking the priesthood, whose function is connected with the performance of religious ceremonies in temples, we find they are at least well off for their necessaries all over India. Those attached to small shrines get only enough to keep the wolf from the door. Only a few of them are educated. They possess neither the incentive nor the means required for ancient or modern culture and have therefore very few healthy mental interests. As they have to keep up appearances their criminality is in a suppressed form and little cared for by society. Their delinquency is mainly economic, being in the form of misappropriation of things dedicated to God. They employ their idle hours in the service of vice and crime. Gambling and sexual offences are more common. A certain section of this class is inclined to crime by superstition and ignorance or by adherence to vicious and undesirable customs of old.

As regards the Sanyasis who enter the ascetic order with a selfish purpose it is clear that they practise all sorts of villainies. Some get into the fold under the influence of other members of the order or in a fit of temporary reluctance for the secular life of the world. Many of them correspond to the vagrants of the West. The time-honoured charity of the country feeds and clothes them but their sexual and literary needs are not

met in a legitimate manner. They are often guilty of hypocrisy because they strive to take the credit of forms to themselves. If their sense of self-importance is injured they run into crimes of violence. Some of them are well versed in black art and play upon the fears of the ignorant public.

The idle and lordly well-to-do classes are generally illiterate. They are duped and misled by unscrupulous agents to whom is entrusted the administration of their estates or business. Ignorance of the workaday world stands in the way of the development of an active sympathy for the people around them. Their natural pride is fostered by the flattery of their sycophants and hangers-on. They care little for education because, being aware only of the mercantile value of it, they deem it unnecessary for themselves to take pains to acquire knowledge. Their youths lead a carefree life and sadly succumb to the storms of the adolescent period. If their self-feeling is injured, their vengeful emotion is stirred up and it knows no bounds. The idle rich who live in rural parts are lulled into the belief that their dark deeds would never come to light and, even if they do, their money could save them. Occasional successes of villains of their stamp confirm this belief of theirs and reinforce their criminal inclination. Their escape is facilitated by themselves being abettors or principals of the second degree and not actual perpetrators

of the offence. As they care to keep away from the scenes of crime they find it easy to plead alibi and several of their offences often go hushed up. Their sexual excesses are the result of their cerebral activity stimulated by the combination of luxurious diet, ignorance and absence of work. Marriage of convenience also is another reason. This group comprises the illiterate and wrongly inclined of the zamindars, princes, mittadars, landowners, sleeping partners and the idle heads of rich mutts. Any attempt to educate them on western lines in a palace of art is futile. They must be made to come down from their high pedestal to move and live among the low commonality.

As regards the liberal professions, only a few members of them succeed in amassing money and rising into the ranks of the bourgeoise. In this country social rank does not depend on wealth but on birth and it is the poor of the higher classes who are generally educated. Many of them have been foremost in English education and established large fortunes and extended their activity to all walks of life. They have a chance to be involved in delinquencies incidental to the active pursuit by any means of pecuniary aims or of ambitious projects to mount high in the ladder of official preferment, but their actual criminality is in most cases concealed. It is often the ill-paid staff of the clerical and like

departments of Government Service that are hard pressed for livelihood and their deviations are likely to be detected and punished. Economically most of those who are well-versed in the languages of the country comprise a literary proletariat, the remuneration for their services being hardly sufficient to keep their body and soul together and it is only a sense of respect for their high tradition that keeps them from resorting to criminal ways. Many a poor pandit or teacher of the lower classes in schools is financially worse than the petty trader in a village. The large scale merchant who is successful in his business is sometimes better than even the idle rich, but as he cares little for the education of his sons it often happens that they soon adopt the undesirable habits and manners of the illiterate. In recent times owing to war conditions in which there was an inflation of prices several of the ordinary traders chanced to reap a high profit, but speculation landed many in losses owing to the sudden stoppage of hostilities. Their criminality has been mainly against the revenue. The small scale trader stands midway between the proletariat and the richer classes. He is generally able to keep his head above water, and owing to the fact that in this country large scale production has not been extended to a great part of the rural tracts, the petty dealer remains unaffected by it in many villages and towns. His sons are

better educated at least in the three R's. His delinquency is mainly in the form of petty frauds and he is likely to employ his empty leisure in unorganised vice which may occasionally lead to crime.

Agriculture is the predominant occupation in this country. Only a small portion of those who depend upon it belong to the wealthy class, while many of them are ryots who are in possession of small holdings and whose prosperity depends upon weather conditions. Whenever the monsoons fail, famine threatens the land and is often a fertile source of crimes against property with or without violence. Owing to lack of means of communication in former times the despatch of grain from place to place was seriously hampered and in consequence effects of scarcity were very severely felt everywhere. Recently post-war conditions resulting in the control of transport of agricultural products, the country had to experience the effects of high prices. The economic situation created in consequence paved the way for a very large increase of crimes against property, individual and collective. Food riots were a common feature in this Presidency some time back; the small agriculturist did not benefit by a rise in the price of grain, as prices of all other articles rose as well.

Below the small landholder stands the agricultural workman who has to experience the fears

of unemployment in seasons of drought. The artisans are in a far better position than the ryots although they have only their tools to depend upon. It is the class of field labourer that corresponds to the unskilled section of the proletariat in western society. This class is mainly recruited from the depressed classes who are living in a state of moral and physical degeneration. They are largely illiterate and mostly underfed. They often supplement their scanty means with cheap country liquor. Agriculture necessitating life in the country, offences incidental thereto are quite common in this community. Illiteracy and simple habits of country life lead them to crimes rather of violence than of fraud. Machinery has not yet been largely employed in agriculture. If the scientific methods of cultivation be adopted there will be a fall in the number of field labourers and then the question of unemployment will have to be faced. The land owning classes now evince a desire to reap a high profit by speculations in the sale of agricultural products. But the effects of competition are modified by the extension of co-operative organisations in various parts of the country.

As regards the influence of economic conditions on criminality the general rule is that crimes against property show an increase with the rise in prices of foodstuffs. Thefts are committed

by many of the poor who have before the crisis had means only for bare necessaries of life. Hunger and illness are likely to upset the firmest principles of these men. In the case of those a little higher in the economic scale, the difficulty of adapting themselves to changed conditions makes itself felt because the cost of foodstuffs covers a large item of family expenses while the sums spent on clothing, dwelling, amusements and ceremonies do not admit of sudden reduction. Hence the necessity to find money by hook or by crook. This may be avoided if there be a corresponding rise in wages which hardly takes place owing to the complexity of the situation. It is mainly in times of dulness and unemployment that high prices affect the people. For this reason Fornasceri de Verce considered the problem by calculating the number of hours one should work per diem to gain bread required for a year. The late Mr. Dadabhai Naoroji compared the average wealth of an individual in this country with the cost of absolute necessaries of life of an agricultural labourer in his book on 'Poverty and Un-British Rule in India' and he concluded that the means within the reach of the labourer were insufficient to obtain even his bare maintenance. He has also hinted that the statistics of his time did not give an accurate view of the economic situation of this land. Space does not permit a

detailed analysis of the same in this book. Fornasceri has also made an investigation of the extent to which economic conditions influence almost all kinds of crimes during a given period in England, Italy, etc. The results of his study of the United Kingdom between the years 1840 and 1890 are given in a table by Professor Parmelee[1]. He has shown that economic crimes constitute from two to three-fifths of the total delinquency in various European countries.

The solvency of a country is not brought to light by a calculation of its total wealth ; it is the mode of distribution of products among the various classes, that has a real bearing on criminality. Lombroso has compared the economic conditions of different countries by reckoning the number of persons to savings bank books in them and his figures show that homicides move in an inverse ratio to the same.[2] It is also his opinion that a sense of suddenly acquired wealth favours the increase of crimes, if not balanced by a high character or lofty ideal, for it drives men astray through vanity overleaping itself.

Although some writers hold the view that poverty and crime have their basis in weakness of character and that the one is not the cause of the other, statistics convince us that crime has an economic basis, and that economic factors have been

1. Vide Parmelee's Criminology, p. 77—79.
2. Lombroso, Crime and its Causes.

powerful in the formation of the class of professional criminals.

The distribution of offenders in various occupations is best illustrated by the table of German returns given by Aschaffenburg[1]. Tarde shows from a consideration of French statistics that the agricultural districts show the least and the manufacturing ones the greatest criminality. This may be due to greed and gambling engendered by a thirst for gold in the latter.

With each occupation the nature and extent of criminality differ. This may be clear from the following particulars of Italian statistics.[2] Owing to the scope for the commission of frauds and embezzlement, commerce shows the highest figure in Italy. This may in part be due to the unwholesome legal restrictions of that country on the regular course of traffic. Among agricultural and factory servants thefts and assaults are most common. Resistance to authority is also an ordinary offence of the latter class. Being idle ramblers, the pedlars obtain greater opportunities of committing petty thefts and sexual offences and when they are arrested they boldly resist the police officers. Their criminality shows a figure of 44 to 1,000; domestic servants are naturally guilty of house thefts and hair dressers are mainly responsible for sexual crimes. Cooks, shoemakers, masons and lock-

1. Aschaffenburg, p. 66. 2. Lombroso, p. 194, 97.

smiths furnish a strong contingent of delinquency. While agricultural servants are subject to fewer temptations to Commit crimes against property, the city menials fall a prey to urban allurements. The innkeepers play a passive part in a large number of infanticides, and in at least one-sixth of thefts and poisonings. Lombroso attributes this to the loss of their sense of self-dignity, especially as alcoholism is rare among them. Midwives are of course guilty of abortions. Country women have better occasion for field thefts. A large section of them arrive at criminal practices through the road of prostitution. 'Half of the prostitutes of Paris come from among seamstresses, ironers, actresses, milliners, saleswomen, laundresses and factory workers.' The professional classes in spite of their education are corrupt because of their parasitic character. In Italy, the learned occupations show a high figure for forgery illustrating how a knowledge of the law is powerless in the face of the temptation to strive for the maximum of gain regardless of the means used. In Prussia, the liberal professions furnish 2·2 per cent. of the population and 4 per cent. of the criminals. Political persecution and sectarian fanaticism provoke crime among them in Russia.

We shall now consider the evils of modern capitalism. In Europe it had its origin in the large scale production of mediæval merchants who extended their trade to India and America.

The income of the artisans in those times depended mainly on personal merits. The workmen who had tools and the raw material would not sell his labour to the merchant capitalist and acted independently of him. Consequently, when the merchants undertook the wholesale manufacture of articles, they had to obtain the requisite amount of work from those who had no ways and means and who were therefore obliged to sell their energy or die of hunger. The peasants sold their produce in the city markets and owing to the rack-renting of landlords took refuge in towns and had to find employment only in commercial lines. When the lord began to gather wool and wood for fairs, agricultural labourers were driven out of employment and they poured in ready to obtain work in cities. Now labour became a commodity subject to the law of demand and supply. This favoured the large scale producer who strove to extract the maximum benefit by increasing the length of the working day and reducing the workmen's wages. With the introduction of the machinery, the scope of wholesale manufacture increased enormously and the big merchant was able to undersell the journeyman and the independent workman who remained at home. While skilled labour was in great request before the industrial revolution, unskilled work came into use in the later days of scientific advance in commerce and manufacture.' The

extension of means of communication led to the opening of world markets for the goods of various countries and in consequence there arose a necessity for enormous productive activity. Specialisation was so vastly developed that in the manufacture of pins, for instance, each of them was no longer made by a single workman but by several, every one of whom did only a tiny part of the work. This put an end to the use of the intellect altogether and converted the labourer into a mechanical appliance. Every developed mechanism consists of three parts: the motor, the transmitting and the operating one. The last was so well perfected that a system has been devised in which the material manufactured is passed from one machine to another without human intervention. Consequently, the business of leading the machines did not require great muscular strength and hence the employment of women and children in factories came into fashion. Subsequently, agriculture too was revolutionised by the introduction of machinery in Western countries.

The basic aim of large scale production is merely to make immense profit. While ordinary exchange is good for society, the ambition to win enormous gain makes men self-centred and callous to the interests of others. This has led to gigantic trade frauds in a thousand ways. Commercial morality has become a parody of right

moral principles. Those who evince superior abilities as captains of industry are tempted into aggrandising themselves at the expense of millions of shareholders. Further, the capitalists are induced to create new needs for the nation. They are tempted to get rid of the product on hand by developing the deceitful art of advertisement. Even then, the capitalist is obliged sometimes to sell his goods at a sacrifice to satisfy his creditors and run the risk of sinking deeper and deeper into debt and the ruin of his business tells upon the livelihood of a large multitude of labourers.

Although European society was able early in its history to throw off the shackles of social restraint, it became the victim of the evils of the capitalistic movement. It became divided between the rich few in whose hands wealth is concentrated and the increasing proletariat who lie in the depths of misery. European bourgeoise society [1] comprises the following system of classes:

(1) The first consists of the capitalists who direct their business themselves.

(2) The second includes those who are sleeping partners living upon the interest accruing from their capital. The luxurious life of this

1. Vide Bonger's chapter on the Present Economic System.

class of people sets an evil example to the whole population.

(3) Thirdly come men of the liberal professions who supply their needs by means of intellectual labour. The successful of this class have the same standard of living as the first above.

Capitalism has in a way increased the demand for these persons owing to the application of science to industry. Even here, the unsuccessful form a sort of scientific proletariat whose economic position is very unsteady.

The poor labourer hardly gets into the ranks of this group. If he has ability to direct capitalistic enterprises it is circumstances that must bring his capacity to light. Once failing in an enterprise it is very hard to succeed in another.

The next group of classes is called the Petty Bourgeoisie which was strong and powerful before industrialism undermined its position. Now a member of this division has very insufficient capital. It arouses him to bring all his forces into play and regain his place which tradition assigned to him. He cannot easily comprehend that what earned bread for his ancestors for a long time will some day fail. He is suffering from the evils of fierce competition with big merchants and of life in a circle where ideas cannot be broadened. But his children are better

taught than those of the Bourgeoisie who lead a life of luxury. The ruined members of this group sink into the proletariat.

The last group consists of men who have no capital. Even those who are able to sell their labour are thrown on the mercies of the capitalist who is driven to wring from them the maximum of surplus work by force of competition. They are converted into mere machines by the monotony of work and the unusual length of the working day. Even Sunday rest is not allowed in certain cases. The workman is underfed and has to resort to alcohol to alleviate the torment of excessive task. The sweating system takes up all the time of the labourer except the moments allowed for food and sleep. He suffers serious injury to health when employed in factories intended for the manufacture of injurious gases. A number of trades require so much caution that mere slips from the right mode of handling the machine brings about death or mutilation. Workmen have to do their labour in overheated and congested places. They live from hand to mouth and they have often to buy goods of low quality at high prices in retail shops. Much of their income is spent in rent and yet they cannot help bad lodging. Seasonal trades make the work of thousands depend on economic and climatic conditions. Unemployment drives men from

place to place and impels them to beg or steal. Besides, it leads to forced idleness which resulting in vice fetches sickness and death. The mortality of workmen in no way harms the capitalist, for their supply is not lacking at any time. The unfortunate labourer is now worse than a slave, who was much cared for in ancient days. While hard work ages men quickly, prolonged idleness wears out the force of habit, and makes men incapable of working. As a great writer put it "While excessive labour kills the man in the beast, moderate work ennobles the beast in man." Intellectual faculties become blunted by the stress of mechanical task and engenders vicious habits as a release from the tortures of work. The lack of steady labour and the horrors of penury kill the social feelings in man. Thus, self-respect and the feeling of solidarity are entirely lost. In consequence, the proletarian pursues a life of instinctive impulses. Engel says: 'The working class has gradually become a race wholly apart from the English Bourgeoisie. The Bourgeoisie have more in common with every other nation of the earth than with the workers in whose midst they live. The workers speak other dialects, have other thoughts and ideas, other customs and moral principles, a different religion and a different politics. They and the Bourgeoisie are two radically dissimilar nations.'[1]

1. Engel's condition of the working classes in England, p. 124.

This is the reason why the proletariat furnishes the greatest contingent to criminality.

Child labour is a capitalistic phenomenon. At an age when the children of the bourgeoisie would be leading a care-free life with nothing to do but to cultivate their powers, the issues of the proletariat are set to unskilled brutalising work in the midst of ignorance and coarseness. This makes them egoistic and habituated to a rude and irresponsible life. It deprives them of physical, mental and moral development. It presents bad company for imitation and the mind of the child is turned towards the material and the sensuous. The facilities necessary for a sufficient education are entirely lacking. School education is wholly neglected and the degenerate workman is not a proper tutor of his sons. The paid labour, of the illiterate young, forces them to think only of their own interest and they come in contact with people who are rough and indifferent to their well-being. They become independent at an age at which they must be under control. Consequently child labour leads to an increase of juvenile criminality, which is on this score very great in Germany. It appears to be less in England partly because of a great number of acquittals of young criminals, partly on account of well-conducted industrial and reformatory schools and partly owing to the settlement of industrialism which has been prevalent there longer than elsewhere.

None the less the amount of juvenile crime is greater there than in countries less developed industrially. In France, children are guilty of theft, violence and sexual offences. Italian statistics show that an increase of delinquency under eighteen is largely followed by a decrease of criminality between eighteen and twenty-one.

The employment of women in factory labour dissolves the family and brings about the most demoralising consequences both for parents and children. The bad housing conditions of the proletariat are a source of numerous evils. The living together of a great number of uneducated persons in one small dwelling leads to quarrels and fights and presents opportunities for sexual crimes. The disorder and squalor of the home environment communicate themselves to the inmates. Hirsch says that children of both the sexes have to sleep with their parents and often with the strangers in the same room and often in the same bed. Degeneracy is the result of disordered and illnourished life in this class. The mother is insufficiently fed during pregnancy and the child is little cared for in the first years of its life. Want of rest and sparsity of clothing are the causes of almost all kinds of diseases. 'One must have lived in a great city', says Von Kraft Ebing, 'and have visited hovels of the poor and the palace of the rich to know what mistakes in the bringing up of children are

committed there where the children of the poor amidst dirt and drink and those of the rich amidst arrogance and rascality are going to ruin physically and morally.' Lack of room drives infants to the evils of street life unguarded and untutored by parents or teachers. M. Raux says: 'Let no man attempt to tell us after these revelations that the child born in surroundings which asphyxiated him morally can escape from vice. The child even more than the man is an imitator and responds to the influence of evil example in every thing and especially in morals.'

The capitalistic system is fraught with evils not only for the poor but also for the merchant. By the nature of the mode of production itself the trader has to war on both sides, *viz.*, with the manufacturer from whom he buys and the consumer to whom he sells. If he does not injure the buyers in any case it is for his own interest. Mercury the god of commerce is also the god of theft, because the thief and the merchant are alike in taking account exclusively of their own interests.

The capitalistic influence has tainted almost all walks of life. The press which ought to be a guide for the masses is often a tool in their hands. It poisons the public opinion. In order to satisfy the morbid curiosity of the people and with a view to the increase of subscribers it gives glowing

accounts of criminal adventures. Competition among *entrepreneurs* leads to all sorts of tricks which injure them. Everyone of them grows selfish, envies his neighbour his good fortune and rejoices at the evil which befalls him. The sleeping partner lives without work and does not feel bound by any kind of moral tie to the poor labourers but regards them as instruments meant to serve and amuse him. Even among the liberal professions the capitalistic influence expresses itself in the prostitution of the intellect.

The reaction against capitalism in the shape of the concerted agitation of labourers led to the passing of factory laws. Industrial centres are the scenes of conflicts between employers and workmen. They often end in strikes and lockouts and drive a great portion of the latter into violent crimes. The views of certain economists in this country are not very favourable to labourers. For instance, Jadunath Sircar says: 'There has never been in Indian factories any such overcrowding, bad ventilation and undesirable 'mixing together of the sexes as marked the factory system in England before Peel's reforms, nor has there been, except occasionally, any severe overworking of our adult labourers as they are physically incapable of working strenuously for more than a certain period daily even when tempted by overtime payment. Even when they are present at the mill for fifteen or sixteen hours they render

less than twelve hours' effective labour as they spend the rest of their time in loitering about, taking their food, smoking and even bathing in the mill compound.'[1] Although from the standpoint of competitive work India may be behind Western countries, the existence of abuses has been the basis of a series of the Indian Factories Acts meant to remedy the evils of employment of children, and excessive hours for women, etc. Laws have also been passed in respect of sanitary and protective arrangements required for factories. As in the West, the strikes are also taking a political turn in this country. Sircar's opinion about the special character of Indian strikes is remarkable. 'Owing to the ignorance of the Indian labourers when they do strike, the time is so ill-chosen as to cause great loss to both the parties and to a decline of industry; whereas in England strikes are declared and ended in such a way as to benefit the labourers with a minimum loss to the business.'

So far as the labourers are concerned, their movement for unions could not exist without freedom of the press and of forming associations. The insuring of these liberties has forced the workmen to take part in politics. Formerly when they had no idea of the position they occupied in society they permitted themselves to be availed of by other political parties. Now that they

1. Sircar's Indian Economics, Chapter V, p. 192.

understand that their interests are different they have formed an independent party by themselves. The labour movement often blends itself with socialism with a view to get rid of the present economic system. Social democracy has become the political organisation of the working class. Its ideal is to make the means of production belong to all more or less on an equal footing and to deliver humanity from the material and intellectual miseries of the day. In quite recent times wars and revolutions have been the outcome of carrying socialistic ideals to an extreme. On the side of the employer, the ambition to extend his field of operation to non-capitalistic countries has been productive of immense disturbance in the past and in the present both within the country and outside it. The army served a double purpose of repelling and attacking foreign forces and of restraining the proletariat at home, and Governments allied themselves with powerful capitalists. This has been brought home to us by the recent world war which is after all an unusually violent expression on a gigantic scale of German capitalistic ambition to win markets for its enormous output of commodities quite out of proportion to the needs of the country.

No sooner had the hostilities closed than the gigantic labour movement started by Lenin began its course. The Bolshevist agitation has grown up into a terrific international class war against

all the established institutions of modern civilisation. 'Their aim is to establish a universal labour State in which there are no national barriers, by abolishing private property and organising all production by the workers for the benefit of the workers alone'. It is said that they have let loose the bloodhounds of anarchy and their 'Red Terror' has claimed victims more numerous than that of the French Revolution, and that they have brought to the surface instincts of brutality undreamt of till their time. Bolshevist activity is dwindling now and is perhaps on the way to its vanishing point.

Although crimes which are traceable to pathological and degenerate phenomena are not directly due to economic conditions, they are often the outcome of the insanitary and immoral life led by the proletariat on the one hand and the over-excited careworn career of the active merchant or the manufacturer on the other. The indulgence of the idle rich in excesses of all kinds and the overanxiety of the employer are likely to cause a predisposition to nervous debility or neurasthenia.

Bonger says that sexual jealousy is mainly due to the traditional idea of woman being viewed as man's property. The dependence or otherwise of a woman varies more or less with her economic position in the family. 'Our laws and

physiological exigencies do not harmonise, and in consequence adultery creeps into family life with the result that with monogamy at law, poligamy exists in secret.'

Crimes of vengeance spring from causes belonging to economic and sexual life. The conflict between the capitalist and the labourer excites almost all centrifugal emotions, and sexual discord is strengthened by feelings connected with poverty; for as the woman is a wage earner in a poor man's family her economic value is an element which engenders jealousy in her husband.

The economic influence of seasons is emphasised by socialists. Increase of crime against person in summer is attributed to greater opportunities of meeting during the season, as men move away from their homes and gather in cities and watering places. The height of criminality against property in winter is ascribed to the increase of needs and want of employment during that period. The statistician Maury in his criminal calendar describes characteristic crimes peculiar to each month of the year. For instance, in August crop-burning is the chief offence owing to the occasion for the tenant to revenge himself upon the landlord; the criminality of September and October is markedly in the form of embezzlements and bribery, because in these months rents

fall due and accounts are settled. With the resumption of business activity in November, falsification of accounts occupies a prominent place in the list of crimes. From October to January highway robbery, theft and parricide occupy the foremost place. The desertion of fields and the scarcity of supply create the requisite conditions and long nights afford a suitable opportunity for the commission of crimes. In this season, offences against property are in the shape of petty thefts relating to articles of small value like the clothing and food which are things of immediate necessity. In January, the passing of counterfeit coins and the robbing of churches are characteristic events owing to the development of commercial and festive activities at that time.

Vagrancy and mendicity are regarded as offences in the nature of contraventions in European countries. These are mainly due to economic causes, and increase in winter when forced unemployment is at its height. The class of beggars is largely reinforced by children and young people who are bred up in unwholesome environment and those forced from bad treatment to run away from home. Illegitimates, orphans and castaways also swell their ranks. A great portion of poor children are taught to beg by their parents. Sometimes unemployed men going from place to place in search of work are tempted to get money by begging on

the way to meet the expenses of the journey. Vagrancy is also due to a love of adventure on the part of the poor man. One great writer said: 'Put money in the pocket of the tramp and you make him a tourist; the sportsman and the delinquent are separated only by the thickness of some hundred sou pieces.' Roving is also a feature of people unwilling to work because they have not been accustomed to the unattractive labour of the proletarian from childhood. Sometimes, the attraction of profits in clever beggary is a potent influence. Clever beggars are able to secure a better income than the wage-earner. In New York, a beggar has the chance of getting a dollar a day. In England, he gets as much as ten shillings per diem. This shows that blame must attach to a state of society in which honest labour is so poorly paid, that begging is more lucrative. A large number of criminals are recruited from these classes of idlers. Sichart's statistics show that 23% of prison convicts are from among vagrants and 27% from among mendicants. 44·2% of thieves, 17% of swindlers, 14% of sexual criminals and 15% of incendiaries are recruited from vagrants, 35% of thieves, 20·2% of swindlers, 17% of sexual offenders and 15% of incendiaries are supplied by the class of mendicants according to Bonger's calculation.

In this country vagrancy and beggary are not regarded as offences, but there are provisions

in the Criminal Procedure Code to the effect that any one who is not able to explain how he gets his livelihood may be arrested by the police authorities and village officers. Indian mendicants are said to number about five millions of the population. But anything like the details of European statistics on the subject is yet to be prepared.

As regards Indian conditions, the study of the criminal statistics of a province like Madras during the economic vicissitudes of recent years brings into prominence the causes of modern criminality. In the year 1918–19 keen distress culminated in food riots and there was an abnormal increase of crime which reached a level unsurpassed during the last forty years. The increase was mainly in house-breaking and theft; dacoities rose by 455 to 878 and robberies showed an increase of 162 over and above the number of the same during the previous year. Popular risings took place in no less than twenty-two districts in September 1918. A man in Guntur owing to poverty threw his children and himself into a well and died. In Madura for the sake of jewels a woman decoyed a girl away and threw her into a channel; a barber woman tired of life jumped into a well with her child, the baby died and she was found clinging to a support. In Kurnool, dacoities and robberies were due to the activities of two criminal classes—Chentsus and

Donga-Woddars. The Rajus of Pippara village in Kistna District, about two hundred in number, attacked the house of a money-lender with tom-toms and torches and carried off property worth about Rs. 20,000. Similarly, a gang of fourteen Mapilla dacoits raided the house of three Brahman bankers in Malabar. A number of Yerukalas and Muhammadans waylaid about two hundred persons in Kurnool. In Conjeevaram, a mob numbering about 2,000 persons attacked on the 10th of September, 1918, the railway station in which rice bags had been stored and carried away three hundred bags of the commodity. They attacked a party of railway volunteers and three of the rioters were killed, as a result of fire arms used in self defence. At Kotagiri, a dismissed servant robbed a lady of property worth about Rs. 13,500. The Criminal Tribes Act was extended to about thirteen communities in that year. The economic struggle took a political turn when Dr. Varadarajulu Naidu put himself at the head of strikers in the local mills of Madura.

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PART B

ALCOHOLISM*

Alcoholism is regarded by all the schools as a dangerous factor in criminality. People resort

* Based on Bonger's Chapter on Alcoholism, p. 356, 373

to alcohol mainly as a result of economic conditions. Its dangerous character reminds us of Cassius' words in Othello: 'O God that men should put an enemy in their mouth to steal away their brains, that we should with joy, pleasance, revel and applause, transform ourselves into beasts,.....every inordinate cup is unblessed and the ingredient is a devil; to be now a sensible man, by and by a fool and presently a beast.'

Now why people should relish alcoholic drinks is the question. The answer is that it not only pleases the palate but also raises pleasurable sensations in the cortical region. For the same reason once a person takes to it, its grip on him becomes stronger and stronger till there is excited a thirst for an enormous quantity since the use of it weakens its effect and the excitement of agreeable sensations requires a daily or gradual increase of the quantity drunk.

The worst feature of alcohol is that it is most treacherous to those who run to it to make good their defects. It is like a 'flame whose brightness attracts and proves fatal to gnats in the air.' The grinding work of many an occupation drives men to it as a safeguard against fatigue and abnormal temperature. Bonger speaks of 'long-shoremen who work at a stretch even for twenty-four hours.' In great heat and great cold there

is a mental depression and discomfort which is usually removed by regular diet, clothing and ventilation. When these are wanting, workmen seek to blunt their uncomfortable feelings 'through copious draughts of spirituous beverages.' This is the reason why the retail dealers of intoxicating drinks strongly oppose the shortening of the period of labour for workmen. Furthermore, the poor cannot hope to buy alcohol of good quality, so that bad stuff produces the worst ravages among them, and exerts more harmful effects upon their ill-nourished system. The abnormal inebriety of the working poor is clear from Aschaffenburg's assertion that 'liquor is a large item in the temperate workman's expense account.' In this country, toddy is the favourite drug with the hard-worked pariahs and pallahs.

One of the reasons for the prevalence of alcoholism is that the devilish thirst aroused by the irritation of dust or baneful gas produced in many industries on the mucous membrane of the mouth is not quenched so effectively by soft drink or water as by strong alcohol. The influence of noxious vapours in chemical works is far worse than that of dust. Then how often the sight of ill tempts men to do evil! Workmen who come into contact with industries in which alcohol is manufactured and sold will naturally be tempted to use it. This is the case in

distilleries, breweries and alcohol warehouses. One M. Schuler a Swiss Inspector made an investigation of the consumption of the drug by the industrial proletariat and by the agricultural one in a Swiss canton. He discovered that the latter consumed far less alcohol because of their better food and nourishment. Again, if the workman has not got a good house, he marches straight from the factory to the dram shop for comfort, light and company and also because he is not worried there with the perpetual cares of his life. On the other hand, it is interesting to note that if workmen pursue a useful ideal and organise themselves in unions and political parties, their demand of alcohol falls down. This is shown by the greatest consumption of it among unskilled labourers whose existence is rather mechanical than purposive.

Apart from the poor, prostitutes are said to resort to alcohol with a view to dull their sensibilities. The idle rich regard it as a pastime necessary to dissipate the ennui resulting from the emptiness of their existence. Work they depreciate as needed only for those who feel the need to earn their bread. Money-making men have recourse to it to drown their vexations consequent on nervous activity abnormally increased by the competitive struggle to undersell their rivals.

Effects of imitation in alcoholic families are most injurious to children. Intemperate parents give their children liquor. Dr. R. Frölich brought to light the following facts at the Eighth International Congress against alcoholism which met at Vienna. He showed that out of 8187 children from 6 to 14 years of age going to school in Vienna, there were 49·5 per cent. who already drank beer; 82·1 who had tasted wine and 94·2 brandy. Out of these 32·1 per cent. used beer regularly; 11·2 per cent. wine and 4·1 brandy.

Alcohol is in itself regarded by socialists as having largely come into existence in connexion with capitalistic concerns. In Manu, use of alcoholic drugs is treated as a crime of the first seriousness. Among the Greeks, draught of an unadulterated intoxicant was regarded as a custom barbarous and unworthy of a citizen. Among the Romans, only a portion of the rich were addicted to it. Although Arab physicians know how to extract brandy from wine, they used it only for medicinal purposes. In the middle of the sixteenth century, the distillation of spirits from grain brought about a considerable cheapening of the price of these drugs. In 1550, Hungarian miners first used liquor to increase the amount of work done. With the development of capitalism, 'King Alcohol began his triumphant march' which has continued uninterrupted up to the present day.

Up to now we have been studying the ætiology of alcoholism. We shall now see how it is directly and indirectly conducive to criminality. Chronic inebriety has such a demoralising influence that even during the absence of drink, it engenders a pre-disposition to crime as evidenced by a great number of its victims among prisoners. The judicial statistics of Belgium in 1900 show that among recidivists, about 32·2 per cent. had been convicted of violating the law against drunkenness. Among women, the habituals showed a figure of 8 per cent. while non-recidivists showed only 1·1 per cent. In the prison of Mons, it was found that alcohol claimed 53·9 per cent. of the inmates. In Denmark between 1871 and 1880, 27 per cent. of the convicts in a prison containing nearly three thousand of them were drunkards. French statistics for 1900 showed 66·4 per cent. to be alcoholics among criminals. In Italy, out of 507 criminals examined by Dr. Marro, about 74·7 per cent. were of the same category. Similarly the percentages of different countries are generally very high. Wherever criminality is habitual, alcoholism is one of the principal factors thereof.

Alcohol leads to sexual offences because in acute intoxication passion is so violently stirred up that the moral force is too weak to restrain it. Dr. W. C. Sullivan showed at the International Penitentiary Congress at Brussels that more than

50 per cent. of these crimes were caused by alcoholism. Lombroso says that one of the causes of separation and divorce in Germany is drunkenness. In Austria, out of 179 cases of rape, etc., examined, there were 46 committed in a tipsy condition. In Sweden, 36 per cent. of those guilty of indecent assaults were drunk at the time of crime. Between 1892 and 1896 the Swiss statistics showed that 21·5 per cent. of offences of this kind were due to this vice.

Drunkenness at an acute stage makes a person more disposed to commit occasional acts of violence than chronic states thereof. Professor Ferri shows that during the years 1849 to 1880 in France, the offence of assault showed a rise and fall with the success and failure of the vintage season. Statistics of assault showed the highest figure on Sundays. Although this may be accounted for by other causes, the predominance of alcoholic influence cannot be underrated. In Germany it was found in 1871 that out of 2178 crimes, 58 per cent. took place on Saturday nights, 3 per cent. on Sundays and 10 per cent. on Mondays. On pay days and holidays, the workmen figure as occasional drunkards and the crimes of assault and battery mostly occur. On Saturday the pay day and Sunday the holiday, money is spent on liquor. On Monday the drunkards keep at home to recover from the effects of their excessive

indulgence. Among 2178 cases in a week, 215 occurred on Monday and of these 112, *i. e.*, 53 per cent. were committed by men who did not go to work on that day.

To procure alcohol, men steal and commit violent acts and do not shrink back from forgery and other fraudulent offences. Drinkshop is the rendezvous of all accomplices. German statistics show that theft, arson and homicide are often the result of alcoholism. Among occasional drunkards there are two sets of offences, the one relating to person and the other in respect of property. The first set consists of crimes of assault and battery, sexual misdeed and resistance to authorities; the second consists of thefts and embezzlements. The offence of forgery is least influenced by this vice, as it requires clearness of mind for execution.

Alcohol is sometimes drunk to obtain courage for doing and as an excuse for misdeeds. In America, St. Johnsbury was exempt from crime among its large working population owing to the fact that the sale of fermented beverage was prohibited and every alcoholic drug was supplied like poison with the consent of the mayor upon the written demand of the consumer.

This drug is a strong weapon in the hands of leaders of riots or revolutions. During the French Revolution it inflamed the bloody instincts

of the crowd and the representatives of the revolutionary Government. Monaster during intoxication passed an order that Lassalla, a friend of his, should be guillotined and the next day repented of the mandate that he had given. Taine gives us the case of a soldier getting drunk and shooting the women who refused his request. Intoxicants are used by liberated convicts with a view to sink their sense of infamy.

Alcohol diminishes by one-fourth the capacity of the blood vessels to take up oxygen and produces congestion in the membranes of the cortex of the brain. The motor centres are over-excited and intellectual functions are arrested. This gives the drunkard an illusory power impelling him to the most brutal act that he can commit.

Even quantity not sufficient to cause intoxication is enough to disturb the perception of external impressions, and give rise to a misunderstanding of gestures and words. Psychologically our movements are responses to impressions received from the external world. Between the reception of an impression and the starting of the response, there is an interval which is measurable by delicate instruments within 1/1000 of a second. This is the time occupied by the psychic process. It is of course very short when the work that the mind has to do is very simple. Under the influence of even a very small amount

of alcohol this period is shortened still further but at the cost of reliability. The psychic process of deliberation is impeded by the increased motorial tension. In the first stages motorial excitability shows itself in loud talkativeness, screaming, singing and disturbing the peace. The impulse to make purposeless movements finds occupation in handling inanimate objects, the colour, the shape and often the mere existence of which act as sources of irritation. Then follow the altercations with persons and the damaging of property. In the case of the occasional drunkards, the acute stage is reached sooner than with habitual inebriates.

The indirect effects of alcoholism are clear from the fact that it is an established factor of degeneracy. Professor Dallemagne says that alcohol can by itself create all degenerate and unbalanced states of the organism. In the Swedish army, alcoholics are rejected for want of strength or development. These rejections went up to 32% in 1867 and in 1868 after the promulgation of the liquor laws fell to 28%. Further, alcohol is said to diminish stature.

'The tall Woljaks after having used brandy to excess, diminishd in stature until they fell below the middle height.'

The question of alcoholic heredity centres about the injury to the germ cell. Stockard most cautiously carried on a series of controlled

experiments on the effects of alcohol on the germ-cells of animals. He found that the degeneracy caused by it might be passed on by defective offspring. The use of the drug by a pregnant mother has a deleterious effect upon the nervous system of the unborn child. Alcoholism in children is a European feature. Partial intoxication is the channel through which several sex delinquencies are committed. A little beer will upset an adolescent girl.

We may end by considering the effects of various drugs as influencing criminality. In East Germany, the spirituous liquor called ether is largely used in place of alcohol. This produces a condition of numbness and paralysis with a slight intoxication. Habitual use of it may destroy family life and undermine the economic balance.

Morphine is a costly drug which holds the user fast in his habits and induces an irresistible desire. It is used by professional men and others. Owing to the difficulty of obtaining it legally, illegal modes of purchase lead to forgery, false prescription, theft and fraud. Women even resort to prostitution for the purpose.

Cocaine is productive of hallucinations. Indulgence in it for a few months may produce insanity. It gives the greatest boldness to the weak so as to provoke them even to murder. With respect to tobacco, Lombroso says that those who commit crimes of blood show a greater liking for

the use of snuff than thieves and forgers. The passion of minors for this stuff leads to idleness, drunkenness and family crime. If there is a lower figure for criminality side by side with much use of tobacco, the reason is that the civilised people who use it control themselves.

Opium is greatly in use in Asiatic countries. The Malay running amuck is impelled to his homicidal mania by the intoxication of opium. Apathy, impulsiveness and tendency to murder are often experienced by the Chinese opium eaters. A Chinaman in order to get money for opium-smoking staked even his own fingers which he cut off joint by joint. A forced abstinence from this drug shows itself in rage, melancholy, suicide and homicide. Spoiled Indian maize causes pellagra and induces fierceness and sometimes moral insanity. A man afflicted with this disease killed one of his children for stealing some potatoes from a field to satisfy his hunger. A woman suffering from it publicly threw a new born child into a well. The use of hashish is very wide in Africa. It produces a tendency to steal.

Absinth and vermouth are drugs that poison the nerve centres. In this country, alcohol is distilled from various kinds of barks and roots. In Manu, there is reference to the spirit of rice prepared from the filthy refuse of the grain. There were three principal sorts of liquor extracted

respectively from (*a*) opium drugs with sugar, (*b*) from bruised rice and (*c*) from the flowers of maduka. Asava prepared from narcotic drugs was the most pernicious of ancient beverages. Although the distilling processes more or less continue to be the same, the staple drugs used have varied from time to time. The soma juice of ancient times has its counterpart in the toddy of to-day distilled from the palmyra or cocoanut and used largely in Southern India. Opium and ganja are most prevalent in the north; while the southern drugs have an exciting virtue, these have a tendency to depress the energies. English wines and beers are largely in use among the well-to-do classes. Tobacco is commonly chewed along with betel leaves and arecanuts.

Lastly, excessive use of tea and coffee in children tell upon their nerves and leads to irritability, disobedience, truancy and all its temptations. Intoxication is produced even without drugs by a prolonged oscillatory movement of the head in some tribes. Even excessive drink of water is said to produce intoxication. The army of crime will be denuded of its powerful members if alcoholism is once for all done away with. The low criminality of India notwithstanding a large number of the professional classes of criminals must in great part be attributed to the comparatively low level of alcoholism in the country.

LECTURE VI

CAUSES OF SPECIFIC CRIMES AND CLASSIFICATION OF CRIMES AND CRIMINALS.

PART A—CAUSES OF SPECIFIC CRIMES.

In the foregoing lectures we investigated the sources and conditions of criminality in general, and here we shall change our point of view and consider the causes of a few specific offences.

Political crimes proper appear to be incidental to the progress of advanced communities and signify acts committed with an aim right or wrong to benefit society or to deliver a subjugated people from oppression. Resistance to authorities in self-defence is common with all violent offenders, who endeavour to effect their escape from the clutches of law. We should not therefore include it in this category ; nor is the murder of a king be styled an offence against the Government, unless it is inspired by an altruistic motive. Attacks on the State presuppose 'an attitude of mind which dissatisfied with the existing conditions is fired by the ambition to realise an ideal that is inconsistent with the practical politics of the day.' They are the effusions on a large scale of a revolutionary spirit which takes its rise from men of fertile invention or great intellectual force. Bloodless revolutions and revolutions by

bloodshed have the same purpose in view; but while the means adopted in the one case are peaceful and constructive, the methods of the other are violent and destructive. Everywhere it is one or two single souls that first originate the idea, the dissemination of which brings about reformation or revolution as the case may be. If genius is the basis of political innovation, it does not gain expression unless the organism is healthy; it is only when men are strong and hale that they dream of shooting higher than their wonted mark. For the same reason, the people in mountainous tracts strike for freedom far more fearlessly than those on the plains. The former breathe the free breeze of the hills, imbibe a love of liberty and health and cannot in consequence brook restraint. The inhabitants of Attica were divided into three political parties according to the nature of the soil where they lived, *i.e.*, into hillmen, plain men and shoremen. While the first class strove for a popular government, the second favoured the oligarchical form of it and the third was for a mixture of both.

Again, political offences aim at a change for the better of the existing order of things. Innovations are the result of exchange of fresh views, and but for the impact of foreign ideas, a nation would ever be moving in its timeworn customary groove for centuries and centuries.

The clash of opinions is found where people of different climes cross and recross one another. The frequency of political risings in Poland is owing to its situation at the meeting point of the Slav, the Teuton and the Byzantine. The influx of novel sentiments is where members of several nationalities meet and mingle as in the industrial cities of Europe and America. In an agricultural country political revolts occur only few and far between; for instance, in England of the eighteenth century, men in the cities were mostly Liberals and Whigs, while the landlords in the country were strong champions of Toryism.

So far as racial influence is concerned, active and enterprising races aim at reform with far greater persistence than those who are passive and sluggish. Broadly speaking, while the Caucasian type is for activity and advance, the Mongol is indolent and conservative. The crossing of the races resulting in an independent variation of the breed is an important factor in the furtherance of progress. The vast political and intellectual development of the Ionians is attributed to their intermixture with Lydians and Persians in Asia Minor. Similarly, the rise of the Slavish Poles is attributed to the combination with them of the Teutonic element in its nascent state.

More important than this element of race, are historic traditions that serve to implant ideas

and make them take root in the consciousness of the people. This is clear from a study of the English constitutional history. The *Magnacharta*, proposed to confirm ancient rights and every legal innovation judicial or statutory, was made in the name of the customary law of the country. Machiavelli said 'Whoever would reform a free state must preserve the shadow of the old forms.' This is a truth based on the principle that the mind of the populace feels at ease, only if it is required to adopt anything in the name of what was revered by their ancestors, as then it will have to move in the line of least resistance. In all cases of collective criminality, we see the potency of the mental processes of imitation or suggestion, by the force of which political ideals are espoused by the people, rather than on account of any common feeling of their necessity, especially in countries where the benefits of education in politics have not filtered down to the lowest strata of society.

While the abovementioned causes prepare the ground for public activity of a progressive character, the direct or immediate occasion for the same arises from social, economical or political conditions. It is the neglect of the well-being of the people and the misunderstanding by them of the attitude of the Government that are at the bottom of agitations against the State. Persecutions of respectable men who are held in high

reverence by the masses is another important cause of reaction against the Government. Where the Sovereign regulates the administration in harmony with the needs of the people, revolts will be few or none. The term 'people' should not be confined in meaning only to a small minority of the rich and the influential in the country. Aristotle considers the struggle between the social classes as the source of all revolutions. He says, 'To whatever side the Government inclines, it always degenerates through an exaggeration of the principle on which it is based.' If in any monarchical State the power of the ruler be carried to an extreme, it evokes an anarchical reaction which proves fatal to its existence, as is illustrated in the overthrow of the Czar of Russia at the present day and by the fall of the tyrants in Greece in ancient times. Similarly, the disturbance of the social equilibrium by the exclusive predominance of one section is really a source of danger, because it will first lead to atrophy which will culminate in anarchy. The conflict between the Patricians and the Plebeians has been the mainstay of political troubles among the Romans of old. The domination of the clergy retarded the progress of many a Latin country. Class enmity gives rise to the phenomenon of secret societies like that of the Chartists in England and of the Nihilists in Russia. The evils of the quarrels between the Guelfs and the Ghibellines of Italy

in mediæval times are well-known to the student of history.

Sometimes societies originally formed for religious or communal purposes have transferred their energies to the political field. The standard example is furnished by the history of the Muhammadans and Sikhs in Asia and that of the Papacy in Europe. The Muhammadan government was overthrown by the Mahrattas because of the conflict in faith between Aurangazeb and Sivaji. The Sikh Wars and the Great Indian Mutiny were mainly inspired by differences in creed. Even now religion is a powerful tool in the hands of a thousand political agitators, for the spread of seditious ideas among the people. Without it, the hold of the Indian politician on the public mind would be rendered feeble and unstable. Even the half-way union of the Hindus and Muhammadans at the present day is based on a recognition by some of the political leaders of a few broad elements of unity common to their beliefs.

Lombroso refers to a secret society in Italy called 'The Fraternal hand', originally started for mutual aid in cases of sickness or death. Certain duties occasioned certain crimes, and finally the association ended by ordering assassination of its enemies and intimidating the juries sitting at the trials of its criminal members and preventing the outsiders from bidding at court auctions for the sale of property. In 1883 it was found to be in a

degenerate condition, and respectable persons bought off its protection.

Of the economic causes of political revolutions no mention is necessary. Their greatest influence is plain from the width of socialistic efforts of the day throughout the world. In history there has scarcely been any uprising that had nothing to do with economic conditions directly or indirectly. The Civil War against Charles I was due in part to his excessive taxation necessitated by a rise in the value of money. Modern nihilism sprang from the contest between the monied and landed classes, and to-day industrial strikes have become a central point of political agitation.

Accidental causes represent the sparks that are applied to combustible materials. Wherever disturbances have originated in trifling circumstances, their real basis is not generally noticed. Aristotle refers to a revolution in Syracuse where the constitution was changed, because of a love affair which drove the young noble men and their followers of the place into revolt. Lombroso refers to a rebellion in Madrid which owed its origin to the fact that the king did not take part in a sectarian procession. Superfluous it is to multiply similar instances.

The difference between offences which further in reality the progress of society and the excesses which are part of a destructive plan of

work lies in the fact that, while the first class of acts wear the appearance of crime, by reason of their being inimical to the interests of the ruling party that may not actually care for the welfare of the public at large, or on account of their being premature for the time being, doings of the second class are really anti-social in spite of their altruistic aim. The authors of the latter category are called anarchists. These are fewer than political offenders who pursue a constructive policy and are mainly young men of an excitable disposition actuated by altruistic motives. Thoughtlessness or absence of foresight is mingled in them with a ready impulse to carry out by fair or foul means what they regard as their ideal. Bonger has given the ages of a number of European anarchists. 'Leauther and Langs were 20 years old, Henry 21, Caserie 21, Schwabe 23, Pallas 24 and Salvador 33 at the time they committed their crimes. None of them were over 33.'[1] Although they pursue a destructive policy they have a repugnance for military discipline. Their great vanity is a marked feature. Desire for fame is not their main motive, but it is incidental to their individualistic temper. The fundamental cause of anarchistic trouble is economic. Most of these rebels have been stung into criminal activity by the miserable conditions of which they have been the victim. Those who had no

1. Bonger, p. 651.

experience of the bitters of poverty turn violent owing to their intense compassion for the poor. Their crime is often due to a wish to avenge the down trodden on the rich. They are deplorably wanting in prudence. They cannot view all the aspects of any question with calm consideration. Many of them have not acquired even a tolerably good education in arts or sciences. Their ignorance of history is in part responsible for their indifference to any constructive programme, and hence they fall a prey to the unhistoric idea that thorough subversion is necessary for reform. Their ideas of justice engender only a vengeful spirit which is stimulated by their characteristic recklessness for life.

Violent offences which are not political in character, but which take place on a large scale between community and community, may claim a brief attention. Where two alien tribes settle as neighbours on foreign ground, misdeeds are most prevalent on the boundary sections of their respective territories. This is especially the case where the inhabitants speak different languages. This is also incidental to colonisation in the midst of savages like the Negroes or the American Indians and to the movement of commercial settlements like those of the French and the English in America, Africa and India.

Of offences against property, petty thefts are most common in civilised societies, especially

where there is a close contact between the rich and the poor living side by side. Stealing is committed not only from necessity but also from cupidity excited by the contrast of fortunes. Theft is the satisfaction of a natural tendency and ideas of honesty are entertained only through the influence of moral education and wholesome environment. Pilfering is common with children and minors. Bonger says that if the child is not taught at any time in life that it ought not to steal, it is more than likely that it will have to answer for theft at a later day. Aschaffenburg says that almost every child has once stolen something. People living under miserable conditions hardly appreciate the difference between mine and thine;if their desire is excited by dazzling illuminations and beautiful displays of things of luxury as in the great modern retail store, where every person has a free access and is at liberty to see and handle each article, the poor cannot help picking up at least some of the things which tempt them. It is to this that Laccasagne refers by way of illustrating the influence of 'atmosphere' on criminality. The overwhelming temptation to appropriate nicelooking baubles, which they cannot purchase for themselves without shortening their daily expenses, blinds the indigent to the consequences of their action. Many a purloiner regards theft of a small article as causing only a little discomfort to its owner, while it satisfies a long cherished want of his. On this score, things

of trifling value are stolen by workmen in factories and workshops and by domestics in houses. The great evil of it is that this crime becomes a matter of habit to them even in the absence of actual necessity, and its commission in relation to petty wares is left unchecked in the spirit of the proverb 'the game is not worth the candle.' Theft from dire need is sometimes altruistic in aim, as when it is committed to save one's wife and children or relatives from acute famine. In the institutes of Manu there is a rule that a Brahman suffering from extreme hunger or one who has a starving family to support may take as much grain as is required for a meal from the rice fields or granary of others.

One of the reasons why insignificant acts of dishonesty pass unnoticed is that they involve no violence in the course of their commission. It is professional criminals who use force in robbing, dacoity and resistance to authority. Some robbers resort to poisoning with a view to stupefy and throw their victims off the scent and hide their own identity from them. While heartless thieves find in homicide the means of destroying the first evidence of their offence, hired assassins are actuated more by a longing for filthy lucre than by any spirit of vengeance or malice.

Turning our attention to infanticide we find it is also traceable mostly to economic causes. It

is resorted to in the West mainly to procure insurance money. Of this offence unmarried women are guilty more often than the married. This is a characteristic crime of country life ; in cities abortion takes its place. The material basis of this crime is clear from Belgian and Prussian statistics which show that infanticides increase greatly in the years that are bad economically. In Italy 88·1 per cent. of those liable in this respect were found to be indigent in a certain year. The class of domestics furnish a very high figure in Germany. In India the difficulty of securing a proper match for daughters and the inability to incur the expenses of their marriage have been the main causes of child murder among Rajputs and other classes.

Again, this offence is committed mostly by illiterates. In Italy 92·9 per cent. of the convicts had no education at all. Women who know more than how to read and write were not found among these criminals. Fear of dishonour on the part of the unmarried girls and young widows in India who have slipped into illicit life is a chief reason because the public disapprobation is not only very severe but proves fatal to their life at times. In the West a corresponding case is that of a ' girl who has allowed herself to have a child without the permission of the Municipality and has been discarded by her lover '. Superstitious fear has much to do with this. The birth of a

son or daughter is sometimes considered in astrology to be prejudicial to the life of its parents, and in these circumstances the innocent ones are secretly despatched to the other world, in order to save the adults.

Cases of infanticide in this province which come to the notice of the police are not more than eight in any year. Half of these have been attempts to hide disgrace. Inability to support children and the husband's or mother-in-law's illtreatment have been the causes of the offence which in several cases takes the form of the alienated mother falling into a well with the child, so that the latter naturally dies being delicate in constitution while the former is mostly saved from death. In a certain case the mother unable to witness the syphilitic sufferings of the child stoned it to death. In 1917 a woman brought forth a hermophrodite child and unable to bear the taunts and jeers of the neighbours jumped into a well with the poor babe.

Lastly we shall refer to some of the causes of suicide, which have been elaborately investigated by Morselli in his book on the subject. It is not regarded as a crime by Beccaria on the ground that a man has liberty to yield up his life as he himself is the owner of it and has not surrendered it by virtue of the Social Contract which holds good only to the extent of limiting individual rights by the need of preserving political unity.

As of infanticides, poverty, fear of dishonour and superstition are also the chief causes of this phenomenon. Those who have seen better days resort to it to escape the shame of begging or stealing. In collapses of gigantic enterprises like the Suez Canal and the Panama adventures those who were principally connected with them courted death to help dishonour. When a man of responsibility slips into any chance delinquency and is put to the misfortune of a conviction he feels the sting of infamy too sharp for keeping himself alive. Superstition drives the weak-minded to desperate death. A devotee of Kali cut his throat before the image of the goddess in a frenzy of indignation at the deity not presenting herself and blessing him with a beatific vision of her true effulgence. In several cases in Bengal suicide was committed by the use of poison in recent times. Aschaffenburg's view that the seasonal fluctuation of the psychic balance inclines men to this has been mentioned in a former lecture. Morselli means by the influence of the season that of its temperature. Space does not permit a detailed discussion of the causes of this and other crimes.

PART B.

LOCAL CONDITIONS AND CRIME.

The causes of crime may differ in their nature and extent from province to province, and may

be understood by a study of local conditions in relation to particular offences over a period of several years.

Confining our attention to the state of things in the Madras Presidency, subsequent to the year 1912, we find that the activity of criminal gangs and economic stress have been the chief sources of delinquency. Family quarrels, lust of wealth, sexual jealousy, superstitious belief and the like have also led at times to the perpetration of murders.

In 1913, a receiver of stolen goods in Vizagapatam District met a violent death at the hands of a criminal gang, for not complying with its demands. Similarly, in 1912, a village karnam was killed by robbers for assisting the police against them. In the Tinnevelly District, a money-lender was victimised and buried in an irrigation channel in 1915. Economic causes have unsettled the minds of petty officers even in Government departments. In 1915, a Sheristadar of Chittoor was murdered in broad daylight by a Muhammadan process-server bewildered by the loss of his appointment; the immediate motive was that the victim did not return the sum of Rs. 50, which he had received as a bribe from the offender.

In 1913, a policeman shot a head constable dead for reporting about his misconduct; in 1916,

a Muhammadan stabbed the Sessions Judge of Trichinopoly. The violence of the Saracen element is pronounced in like cases, but it is forced into play only by a sense of injustice real or fancied. The Gollapalle bomb case of 1915 was the upshot of quarrels between two Reddi factions. The Kulasekarapatnam murder case of 1917 is an instance of greed getting the better of affection and regard for relations. It is ignorant pride born of social rank and wealth that is often the cause of several murders committed in the Coimbatore district, a place notorious for the greatest number of homicides in the Presidency. In districts like Madura, a few members of Kallar or Marava or other criminal tribes play the part of hired assassins, mainly for filthy lucre. Sexual jealousy is keener in some lower castes than in higher ones. In 1915, a pariah murdered his wife suspected of adultery and pleaded temporary insanity.

Superstition is claiming sacrifices almost every year. In 1913, a gardener in Guntur committed rape and murder on a grass-seller virgin, by way of seeking a cure for acute gonorrhea from which he was suffering. In 1915, a religious lunatic of Ganjam murdered a man of 30 years old as a sacrifice to a forest deity. In 1916, in Chingleput, one man decoyed his creditor to a jungle and sacrificed him to satisfy a demon that guarded a hidden treasure. In 1918, a man

beat a woman to death for murder of his daughter by sorcery.

In several cases of murder for trifling motives, the victims have been relations of the offender or his enemy. This is a phenomenon which betrays the cruel blindness of passion. In 1913, a human brute killed his girl to annoy the wife for not having meals ready in time. In Chingleput, a Brahman sweet-meat seller, enraged by the refusal of a money-lender to lend him a few rupees, killed his own son in order to bring blame on his opponent. In another case, one of two brothers killed his own daughter to throw the blame on the other. In 1918, a woman with a view to incriminate her relations, killed an eight-year-old girl and represented that the victim was offered by her relations as a sacrifice to a treasure-guarding demon.

As instances of brutality, may be mentioned the murder of a blind beggar by the devil of a woman in Salem, by inflicting 32 wounds on his body; the dastardly act of the thief of a servant who cut off the foot of his master's child to remove the anklets worn thereon; and the hacking to pieces of the wife for refusing to satisfy carnal appetite. Even failure to marry has been a ground of homicide among semi-civilised communities, in cases where it is resented as a violation of custom relating to the marriage of cousins. Murder is sometimes motived by an

attempt to relieve a person from the torment of a chronic illness, and then it is very hard to find a clue. Such was the case with the death of a chronic paralytic who lived with his mother and two sisters and to whose murder no clue was found.

Every year, one or two riots are likely to occur as the expression of the conflict between Hindus and Muhammadans. In 1912, there was one at Tirupati and another at Ganjam ; in 1913, there was a quarrel of the same kind at Chakrapalli in Tanjore and at a village in Nellore. In 1914, there were risings at Chingleput and at Kurnool. In 1915, two similar events took place in the latter district. In 1916, Anantapur was the scene of Hindu Mussalman riots. In 1917, there were revolts at Cuddapah, Trichinopoly and Tenkasi. Sometimes these arise as a result of class enmity as between Shanars and Maravars in Ramnad and Tinnevelly districts.

War inspired the attack of the British by the disciples of German missionaries in Jeypore in 1914. The same year in Ganjam, taking undue advantage of the *Emden* scare, twenty robbers posed as German invaders and committed a torchlight dacoity. Dacoities in the Coimbatore district before the outbreak of war were due to attacks by drunken pallans and valians on people returning from fairs along by-paths. Toddy shops had to be watched during fair days. Robberies are also due to lack of police surveillance

over criminal tribes. This was the case when Namakal taluk was transferred to Salem from Trichinopoly. Sometimes, as in Ceded Districts and other places, village munsiffs encouraged dacoity by members of the criminal gang. In 1915, in a village of Srivaikuntam Taluk in Tinnevelly, the petty Magistrate implicated some of his enemies in a dacoity after having organised it to wreak his vengeance on them. During the war period, cattle thefts decreased in Cuddapah owing to depression in the trade of hides. In 1918, owing to rise in prices, there were food riots in about twenty-two districts.

Crimes of fraud were comparatively very few till recently in this province, owing to the absence of complicated industrial or commercial pursuits. Violent offences against property decreased in the year 1916, owing to suppression and settlement of several criminal gangs. In that year, a Sourashtra at Madura palmed off red clay as Alizarine.

In all the years from 1912 upwards, State offences were so few that they could be counted on one's fingers, and the State prisoners were not more than six at a time in any year. In 1915, there was an uprising among the Moplahs, under the belief that the British Government was coming to an end. The same misleading idea has been at the root of the recent Moplah rebellion which was the most formidable of all the 36

revolts that took place in the course of 81 years. Except the case of one Sitarama Aiyar in 1917 who carried on treasonable correspondence with foreign consuls, there was nothing noteworthy up to the year 1918, when the agitation of post-war reform came to a head with a disturbance of the economic balance of the country and the consequent increase of house breaking and theft. Serious riots were stemmed by police action as that anticipated at the trial of Varadarajulu Naidu's case at Madura. In recent years (1920-22), the outbreak of the Moplahs in North Malabar has made an appreciable addition to prison population. This and the labour trouble in Madras, in 1921, owing to the strike of millhands, are attributed to the influence of non-co-operation. In Nellore, a toddy contractor who was a witness in a case against non-co-operators was murdered by an unknown hand. Cases of resistance to forest laws in Kurnool have been at the instance of non-co-operaters. The Karur riot of the year is said to have arisen out of the refusal of a theatre-proprietor to subscribe for Tilak Swarajya Fund. Future political offences are likely to arise in connection with election quarrels and non-co-operation.

PART C.

CLASSIFICATION OF CRIMES AND CRIMINALS.

Now we shall pass on to the classification of crimes and criminals. The predominant principle

adopted for the arrangement of offences is objective while the division of criminals is mainly subjective; the first throws light on the nature and scope of the injury to society, while the second points to efficient methods of treating delinquents by way of social defence.

The analysis of crime on a single basis is inadequate for bringing its manifold aspects into prominence. The division of offences into acts against person and attacks on property throws little light on their relation to the offender. Each class of crime may or may not be associated with violence. Again, in the first group, murder and assault have to be distinguished from rape and adultery. Similarly, in the second category, theft is to be differentiated from cheating, the one being characterised by dishonesty and the other by fraud. Even a single offence varies in character with the motives that inspire its commission. It may be for gain, for lust or for revenge and the like. Further, an act may be committed intentionally or negligently or with indifference to its consequences. If the motive be taken as the footing of our division, theft and murder will have to be put in the same class in certain respects. Even with regard to a single object, its subjective status is indefinitely various. Another method is to see for whose benefit an offence was committed, *i.e.*, whether it was egoistic or altruistic, and if altruistic whether it is racial

or social in its aim. Classification from the subjective standpoint may throw light on the psychological quality of the act, but it applies better to criminals than to crime. A crime is an external manifestation of an inward tendency and it takes its complexion from its anti-social nature real or fancied. Hence the object of the incidence of its consequences is chosen as the principle of arrangement.

Dr. Mercier has adopted this as the principal basis of his analysis. First he groups together what he calls international offences against which all civilised States react in common, and names them as piracy, fillibustering, slave trade and anarchy. What are called extradition offences are essentially of the same character and may also be put in this category. For instance, although definitions of murder differ in diverse countries the act that constitutes it is punished by all societies if it is voluntary. Perhaps the doctor means that this class must be limited to offences in respect of which the courts of various civilised States take action independently of their territorial or personal jurisdiction. For instance, piracy by the law of nations may be taken cognisance of by all the Governments which respect the principles of International Law.

Offences triable within the territorial or personal jurisdiction of a State are called national. These are classified into wrongs against the

public and acts against the individual, and the latter may in turn be divided into such as affect the life of a person or the happiness of his family or the existence of a class. Public offences are divided into direct and indirect groups, *i. e.*, those which attack the functions of the State and those which seek to weaken the ties of social unity in an indirect manner. The duties of the State may be either primary or secondary. What affects the former is called the major offence and what militates against the latter is a minor one.

Of the direct public offences those which threaten the very existence of the State may be styled treasonable acts, of which waging war against the Sovereign stands foremost. These occur only where anarchists abound among people who bitterly feel the weight of a foreign yoke. Herein may be included those which affect the defences of the State like the army aud the navy. Offences against public authorities are very various in character. If the end of an act be the overthrow of the Government, it is no doubt an offence against the State; but in certain cases, the immediate aim is not to strike at the Government but to save one-self. Even then, its effect if enlarged may be ruinous to political administration. For instance, if a thief resists a Police officer, it is only remotely dangerous to society, the motive of the offence being the escape of the thief; but if a large gang

of robbers attempt to upset public authority, the situation becomes most serious. Offences against the Sovereign and against the highest officers of the State with a view to shatter the Government either by directly attacking it or by alliance with the enemies of the State are placed together in the sixth chapter of the Indian Penal Code. Acts affecting external defences as the army and the navy form the subject matter of a separate chapter. Offences which occasion a breach of the internal peace, whether their motive be resistance to authorities or class strife, are styled in the Code as crimes against public tranquility. In spite of the difference in motive the two classes of misdeeds above-mentioned strike directly and indirectly at the maintenance of State functions. All criminal acts are in a sense offences against the peace, but those which directly affect it by the use of violence or force are different from those which indirectly alarm the members of the society.

As the performance of the State functions depends entirely on the lawful conduct of public servants, the abuse of their position in self-interest is injurious to the public welfare in effect. Hence it gives rise to a class of offences which are grouped in a separate chapter of the Indian Penal Code. Dr. Mercier also recognises this group as a branch of direct public offences.

While offences against the executive, the legislative and the military sides of the government fall under any of the said groups, wrongs against the administration of justice receive treatment in a separate chapter of the Indian Penal Code. Although they are directly concerned with the seeking of immunity by the accused they are in effect detrimental to social security. There is another branch of direct public offences which are against the revenue like smuggling or evasion of taxation, etc., but these do not form the subject of legislation under the Code. Offences relating to coinage and stamps do in a way affect the public at large by disturbing the state of the currency and impairing the economic solvency of a good many individuals.

The direct public offences minor are according to Dr. Mercier as follows : (1) wrongs against State monopolies like the Post and Telegraphic services, (2) violations of benevolent laws like the Poor Law, Lunacy Act and the Factory Acts, etc., (3) acts of disobedience to protective laws, and (4) breaches of the provisions of the laws of sanitation.[1] This group is treated in the Indian Penal Code in the chapter relating to offences in respect of weights and measures, nuisances affecting public health, safety, decency and morals. In these acts negligence rather than intention is the incriminating mental element, and hence they are

1. Dr. Mercier's Crime and Insanity, p. 222.

not regarded as so dangerous to society as wilful infringements. Indirect public offences are mainly such as are derogatory to custom or insulting to religion. Owing to the immense diversity of creeds and usages in this country, the list of wrongs against them of a uniform character is very scanty.

Private misdeeds are divided by Dr. Mercier into (1) the self-advantageous, (2) the family and racial, and (3) the social groups, according to the instincts prompting their commission. The first set is arranged ni accord with the nature of the damage done into offences, (1) against life and safety, (2) against liberty, (3) against property and (4) against reputation and feelings. Classification on the basis of motive comprises crimes committed for personal safety, for material gain and for the gratification of malice. The second is analysed into wrongs affecting (1) the individual, (2) the family and (3) the race, in other words into acts prompted by jealousy, violations of chastity and the marriage tie, and the injury inflicted on the coming generation.

So far as private offences are concerned, the grouping of them in Indian law is more objective than that of the doctor. In the Code, crimes against life, safety and liberty are put together whether the motive be malice, gain, personal safety or lust or whether they relate to the family or the race. While the doctor would place abortion and infanticide in the class of offences

against the race, they are placed in the Penal Code in the category of wrongs affecting life. Offences against property are put together with those against life in his plan, whereas they are kept separate in the Code. Similarly, acts affecting reputation do not form part of the group with the above two classes. Sex delinquencies are divided into those accompanied with violence and those which are not so but injure family relationship. It is why while rape and unnatural vice are placed together in Chapter XVII of the Code, adultery and similar offences in which the element of coercion is absent are grouped in a separate chapter. Offences against property involving an element of fraud or violence or dishonesty are all arranged in the same chapter. Those frauds in which the means employed are false trade and propertymarks, are distinguished from offences connected with documents like forgery. Breaches of contract of service arise out of pecuniary relationship, but are not directed against property. Such of them as are likely to involve danger to life or safety are dealt with in a separate chapter. Offences which cause a breach of the peace by intimidation, insult and annoyance, or by drunkenness are dealt with at the end of the Indian Penal Code.

Bonger[1] makes a classification of delinquencies based on the object of the offender. He gives

1. Bonger, p. 536.

the first place to what he calls economic crimes, which include not only wrongs against property but such as are committed with a view to gain money. Thus procuration and arson in so far as their aim is economic may be placed in this group. This class admits of division on various principles as to whether they are committed out of necessity or cupidity, or whether they are occasional or professional and whether they are achieved by means of force or fraud. Next come violations of sex relations. These may be analysed according to the manner of commission, the object injured and the consequences to the family or society of the injury done. Thirdly come acts inspired by centrifugal emotions like vengeance, malice and similar passions. They may be directed against person or property or reputation, and may even border on the above category. Lastly come political crimes which may be egoistic or altruistic. A political offence may be characterised by violence in words or in action. It may be personally against the Sovereign or the principles of the constitution. In the latter, there is a crime proper of this kind.

Another method of classification is based on motive. If the psychological factor underlying one's deed be considered, there will be as many crimes as there are centripetal and centrifugal emotions that may give rise to anti-social acts. Besides, the character of a misdeed may

be non-famous or dishonourable. Historically from the standpoint of social development crimes fall into two types atavistic or evolutive; the former being characterised by violent and primitive methods and the latter by cunning and scientific devices. Then the same crimes differ in significance and effect when committed by individuals and when undertaken by bands of men. Garofalo's division of crimes into natural and artificial is based on the analysis of sentiments; the first corresponds to delinquencies of international importance and the second to seasonal or local misdemeanours.

In the English common law an offence may be (1) treason, (2) felony or (3) misdemeanour according to its heinousness. Treason was originally a felony which deprived the criminal of his estate. Murder, manslaughter, rape, arson, burglary, theft, robbery and the like are felonies. The French division consists of crimes, misdemeanours and contraventions. The first kind is the most serious and may entail all penalties from loss of life to civil degradation. The second group comprises acts punishable with imprisonment for over five days and an offence of the last class results in incarceration from one to five days. In the German Code crime is an offence punishable with death, penal internment or military detention for more than five years; while an offence is a misdeed if penalised by military

detention for a period not exceeding five years or with confinement or fine above 150 marks; and a delinquency is punished with detention, or with a fine not more than 150 marks.

The division of crimes in Indian law is adopted only for the sake of procedure. It is mainly dual falling into (a) cognisable and non-cognisable, (b) compoundable and non-compoundable, (c) nuisances and other offences, (d) acts triable summarily corresponding to petty misdemeanours in English law and those triable more elaborately answering to indictable offences in the latter system.

There is another classification based on sentiments which are injured. Crimes may consist of acts, prejudicial to religious, national, domestic, sexual and other sentiments. (For instance, vagrancy is an offence against the sentiment related to work). Similarly, they may be counted in terms of violations of social relations like that between the parent and the child, between husband and wife, between the State and the citizen and the like. In these classifications the list of crimes will differ with variations in importance of the sentiments and relations concerned.

Thus far we have touched upon the various principles of the division of crime. Now we shall attempt a review of the different modes of the

classification of criminals. A criminal is impelled to crime by a variety of factors subjective and objective. Owing to variations in degrees of importance and strength it is very hard to determine whether the social or the individual causes predominate in the commission of an offence. As Aschaffenburg says, 'the wealth of Nature fights against arrangement on any artificial plan.' But, for practical purposes an analysis is necessary.

Lombroso in his magnum opus called 'The Criminal Man' classifies delinquents into:

I. (a) the born or instinctive criminal, (b) the moral insane and (c) the masked epileptic—these three form one group of congenital criminals.

II. Those who are impelled to crime by force of opportunity are called occasional criminals but such of them as have a touch of degeneracy are termed criminaloids. The habitual offender owes his criminality only to his evil environment and is not smitten with any organic defect. Between him and the born culprit the criminaloid represents a transitional type.

This author puts into the second group men who have no defect of character but are guilty of acts prohibited by law.

III. Criminals by passion are in his view the victims of a psychological storm aroused rather

by an altruistic than by an egoistic sentiment. This group includes political offenders. The insane are not regarded as criminal unless they fall into the first group.

Professor Ferri follows a similar classification. But he places the criminaloid in the class of habitual delinquents and the criminal by passion as a distinct variety of the occasional type. This writer does not regard the political offender as belonging to the emotional category and distinguishes between habituals and occasionals unlike Lombroso.

While both these authors do not place the professional criminal in a separate class, Dr. Ellis and Aschaffenburg distinguish him from the habitual. While the latter is regarded as a creature of environment, the former is said to represent the criminal aristocracy. Aschaffenburg's classification comprises seven classes: [1]

1. Chance criminals
2. Criminals of passion
3. Criminals of opportunity
4. Deliberate criminals
5. Recidivists
6. Habitual criminals
7. Professional criminals.

The Italian writers put classes (1) and (3) into a single division. Chance criminals become guilty

1. Aschaffenburg, p. 207.

owing to their carelessness due to mental fatigue and the like causes. Owing to the absence of evil intention, this class does not constitute a real danger to society. Aschaffenburg distinguishes between criminals of passion and deliberate offenders owing to the absence of planfulness and premeditation in the one case and their presence in the other. The latter should not be confused with the recidivist or the habitual. The distinction between these two is indicated by the existence of active and negative qualities respectively. The habitual criminal becomes a recidivist if he is convicted several times under the penal code. This class consists mostly of comparatively harmless weaklings who are ' the daily bread of the police organs and district courts'. This author assimilates his seven groups to the broad classification adopted by the International Criminalistic Conference held at Heidelberg in 1897, into three groups of offenders : (1) momentary or occasional, (2) unadaptable to social environment and (3) incorrigible. In the first are placed the three classes indicated above as (1), (2) and (3). Deliberate criminals who are not recidivists and the harmless habituals fall into the second group. The rest of them and professional offenders fill the ranks of incorrigibles. Aschaffenburg does not countenance the type of born criminals, and places the insane who commit crimes outside the pale of delinquents.

Garofalo's classification is on a psychological basis. He speaks of a kind of typical criminal who is full of egoism and in whom altruism is totally lacking, and regards the professional offender as a milder variety of this instinctive type. Crimes of passion are attributed to a class of persons whose criminality may be the result of both individual and external factors. The professional who has specialised in any offence particular to any locality is said to be guilty of endemic crimes. Violent offenders are distinguished from thieves and cheats, who are largely influenced by social environment. The sexual offenders are called cynics, most of whom should be included in the category of fierce criminals while a few of them owe their delinquency to some form of mental alienation. This jurist's analysis is too narrow to cover all cases of criminality. Gina Ferrero follows the same division as Lombroso, save that she does not put the occasionals in a separate class.

Psychologists and novelists have their own methods of classification. For instance, Olrik adopts the principle based upon the conditions of the will which may be influenced by preventive or disciplinary forces. He distinguishes three main groups: (1) those of weak will, (2) those whose will is of average strength and (3) those who have an obstinate will. This is too subjective to be of practical importance. Krauss divides criminals

on the principle of their psychical and physical strength ; he mentions three groups: (1) men of strength comprising the monster, the choleric and the passionate individuals, (2) the malicious consisting of the demoniacal, the intriguing and the roguish, (3) the weak including the scamp, the sneak, the vagabond and the caliban. The first group is characterised by strength, the second by fraud as well, and the third by petty delinquencies, active and passive. This is more practical than scientific. Any recent classification should recognise the feeble-minded and psychopathic offenders, and in the class of pseudo-criminals should be placed persons like Galileo who are guilty of evolutive crimes. Dr. Healy deals elaborately with the group of the feeble-minded. Psychopathic states connected with criminality have been analysed and reduced to the form of a table by Ingegnieres, (which is given in De Quiro's book called ' Modern Theories of Criminality.')

George Ives divides offenders into those who have committed coercible crimes and undeterrable acts. The former consists of men who commit an act 'comprehensibly or deliberately or parasitically.' This reminds us of Olrik's classification. The crime to which the average man might have been tempted is called 'comprehensible,' the doings of scheming rogues are said to be deliberate and the parasite sacrifices others for his own benefit. Similarly the undeterrable acts

may be 'impulsive or passionate or physiological.' The authors of such acts fall correspondingly into these classes of criminals. But this does not take into account chance and political or evolutive types.

Mr. Booth Tucker classifies Indian criminals into (1) the incorrigible, (2) the habitual, (3) the hereditary, (4) the accidental, (5) the young and (6) the infant. In the first class are placed (a) successful leaders of gangs, (b) wealthy employers of miscreants who, in league with the police, secure the immunity of their criminal agents, while they themselves are scarcely suspected, (c) receivers and disposers of stolen goods. To the second class belong those who are creatures of circumstances and who may be redeemed if the faulty system which produced them is overhauled. The hereditary type is peculiar to this country, and furnished generally by the criminal tribes.

The accidental criminal is the occasional offender whose crime once punished must be buried into oblivion. To his case must apply a rule similar to that of Japanese law which makes it penal to injure him in any way after he has served his term of punishment. The juvenile should be separated from the full-blown adult criminal. The army of infant delinquents is recruited (a) from boys and girls of criminal tribes and (b) children of street Arabs of the worst type. It is reported that the leader of a

gang of 28 boys in Calcutta was won over to the right way by an officer of the Salvation Army. It is surmised that there may be gangs of girls as well in large cities.

Of all these classifications that of Aschaffenburg supplemented by that of Professor Parmelee will best satisfy all practical purposes and a combination of both may be arranged as follows:

(1) The feeble-minded
(2) The psychopathic
(3) The insane
(4) The habitual
(5) The professional
(6) The deliberate
(7) Criminals of passion
(8) Criminals of opportunity
(9) Evolutive or political criminals
(10) Chance criminals or pseudo-criminals.

The Indian Jail Committee in adopting the usual division of prisoners into habituals and casuals, have suggested the segregation of such of the latter class as have no vicious character. These are to be put into a category corresponding to the Star-Class in English prisons. For convicts guilty of minor offences, simple imprisonment without work is recommended. The Committee has framed a detailed definition of

a '*habitual*' which is worthy of incorporation in the Code. They have laid down:

A 'Habitual' or 'habitual criminal' means:

(i) any person convicted of an offence punishable under Chapters XII, XVII and XIII of the Indian Penal Code, whose previous conviction or convictions taken in conjunction with the facts of the present case, show that he is by habit a robber, housebreaker, dacoit, thief or receiver of stolen property, or that he habitually commits extortion, cheating, counterfeiting coin, currency notes or stamps, or forgery;

(ii) any person convicted of an offence punishable under Chapter XVI of the Indian Penal Code, whose previous conviction or convictions taken in conjunction with the facts of the present case show that he habitually commits offences against the person;

(iii) any person confined in default of security under Section 123, read with Section 110, Criminal Procedure Code.

Explanation:—For the purposes of this definition the word 'conviction' shall include an order made under Section 118, read with Section 110, of the Criminal Procedure Code, and shall relate only to convictions by a court in British India, or

in the territories of a Native Prince or State in India acting under the general or special authority of the Governor-General in Council, or of a Local Government, or by a court in Great Britain or in any British Colony.

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PART D.

CRIMINAL TRIBES.

In every form of society there is a professional class of criminals which has got a historic background. In Italy, the Camorra is an association of brigands which has been in existence since 1568. In Sicily, the term Mafia which is the name of a criminal class has become a byword for heroism. From Cervantes we learn that there was an association in Spain which levied tribute from every thief for an image which its members worshipped; the police were given a part of its game and its members undertook to execute private acts of revenge. There were similar societies in the middle ages in the prison of Parma and other places. In Mexico, the sons of noble families thought it entirely proper to exercise their strength by practising highway robbery. The barons of mediæval times followed the same ideal. Modern professional criminals in the west look upon crime from a business point of view. Wars and insurrections slacken the check on criminals and familiarise them with the use of weapons. During Napoleanic wars, a band

of thieves styling themselves 'the army of the moon' with its establishment of sham officers and soldiers raided the tenaments of the conquerors and conquered alike. If leaders of criminal bands chance to be men of genius, their followers become themselves masters of terrible gangs in turn and perverse tradition takes root, grows up and broadens from generation to generation.

India is a country whose plains have been a fertile hunting ground for plunderers, marauders, robbers and thieves. The Pindaries and the Thugs were so powerful that they had to be subdued by strong military forces. While they were the scourges of the country at large, there were local gangs in various provinces which caused much danger and loss to the people in general. In the last century, the Iron Safe gang of the Bombay Presidency was brought to book by the able Police Officer Sirdar Abdul Ali. At the present day, the Gundas of Calcutta, who are a terror to those who carry large sums of money with them in the public streets, elude the grasp of the police and play a conspicuous part on the occasion of riots. Special legislation to facilitate their deportation is in the contemplation of the Bengal Legislative Council.

In this country six-sevenths of all crimes are committed by members of criminal tribes, who have come into being as a result of the economical and political vicissitudes of fortune during a long period of history. No doubt some of the tribes

have developed a fierceness which is unparalleled, mostly owing to their environment, but many of these people commit offences against property with a view to their livelihood. The pursuit of this disreputable profession is sanctioned by custom. Caste has strongly implanted a belief that it is one's duty to follow his caste Dharma, however infamous or injurious to society it may be. Hence the criminal communities 'innocently' pursue their nefarious trade. In the words of Booth Tucker, 'these tribes carry on a guerilla warfare with an army of about 150,000 police and about 700,000 village police officers employed in the interests of people who have in the past ousted them. Watched and harassed by an ever-vigilant police, punished, imprisoned, and their freedom curtailed, these descendants of pre-Aryan tribes for the most part are naturally embittered against those whom they regard as their oppressors.'

The absence of a united empire in ancient times to fortify the country against foreign invasions was at the root of frequent disturbances of the calm and peaceful life of the inhabitants. Furthermore, conquerors and invaders threw the land open to bandits of various nationalities who were ever in search of new fields for their plundering activity.

Permanent associations of criminals owe their existence mainly to the instability of the

economic structure of any society. In the report of the Indian Jail Committee we find that Mr. O. B. Starte, I. C. S., of Bombay, who is probably a leading authority in India, inclines to the belief that in many cases, economic causes are at the bottom of the criminal habits of these people. Most of the delinquent classes in India appear to have struck into the path of crime by reason of their inability under certain circumstances to pursue their original harmless occupations. Even now they have an ostensible trade to conceal their objectionable practices. For instance, the Kabulis were originally vendors of asafœtida, cheap cutlery, drugs and dried fruits. Some of them were good knife-grinders and dealt in horses and elephants. The same occupation is apparently followed even to-day. While a section of this tribe are quite honest and live as contractors of earthwork on railways and as holders of teashops and refreshment stalls in many places, another section of them known as 'the Peshwaris' are very dangerous offenders notorious for temple dacoities, robbery, gambling and smuggling of firearms. It is suspected by the police that in the Madras Presidency they have had a part in the temple burglaries committed during the last thirty years at Cape Comorin, Calicut, Conjeevaram, Thirukadayur, Palani and other sacred shrines.

The Mallahs of the United Provinces were originally workmen on boats and watercarriers. Now a section of them are violent dacoits raiding alongside of the rivers Ganges and Brahmaputra. They are known as the river criminals. Between 1889 and 1902, no less than 289 dacoities in ten districts of Eastern Bengal were traced to these people by special police officers. Another division of them known as Chain Mallahs are clever pickpockets and expert lifters.

The Ahirs of Farukabad, Gazipur, etc., were originally a pastoral tribe, but now are notorious cattle thieves.

The Aheriahs of Aligarh figure as gum collectors in the jungles of the Punjab and at the same time are expert railway thieves.

The Sansis of Bhurtpore were originally bards of Jats and their ostensible profession to-day is begging, cattle-selling and the manufacture of ropes, sieves, etc. They are clever burglars and dacoits. An offshoot of this tribe called 'Oudyas' found in Cawnpore, Allahabad, etc., are notorious thieves and makers of counterfeit coins.

The Chapperbunds, who hail from the Bijapur District, were originally roof-builders. Even now, many of them are tillers of the soil or dealers in cattle and their women are good quilt-makers. Men of this tribe learnt the art of

coining in the Mogul period and are now very skilful in the manufacture of spurious coinage.

The Bhamptas of the Deccan, belonging to the districts of Poona, Satara, Nasik, and Ahmednagar are ostensibly agriculturists and bird-catchers. They are addicted to clandestine thefts on railways.

The 'Thaku Wuddars' originally belonged to the Telugu country. They are known by various names in various districts as Donga Dasaries in Mysore, Gudu Dasaries in the South of Madras and Gantichors in the Bombay Presidency. Men and women sell gilt utensils, a kind of tooth-powder, red-dyed palmyra leaf-rolls and needles. Several gangs in the Telugu districts appear to be all matrimonially connected. They figure as tank-diggers in the Tamil country, but are notorious for house-breaking and dacoity.

The Joghis of the Telugu country have been snake-charmers and pig-breeders. They consist of nineteen sects in two divisions and are found in Chingleput, North and South Arcot and in a portion of Nellore. Their professional crime is highway robbery, and sometimes burglary. They correspond to the Kuluvas of the Tamil land.

The 'Yenadhis' of the Northern Circars originally pursued medicine as their profession. Ostensibly they are good agriculturists. A division of them are prepetual burglars and cattle-lifters.

The 'Domara' tribe is a class of jugglers, athletes and rope-dancers. Their women are proficient in making combs of horn and wood. The men are addicted to dacoity, burglary and thefts of all sorts.

The 'Alagiris' of Chingleput District ostensibly pass for traders and have the designation of chetty. They are a class of trained pickpockets.

The 'Kuravars' of the Tamil country have been manufacturers of date-mats, bamboo-rattles, twine and rope from various jungle fibres. In some places they are employed even as watchmen. Their women are good fortune-tellers and tattooers. A section of them are carriers of salt and other commodities from place to place and are known as Uppu-Kuravars; they are expert house-breakers and cattle thieves. The Ina or Thogamalai Kuravars are clever pickpockets and thieves wandering all over the country. They are known as 'Yerukalas,' in the Telugu districts and are called 'Capemaris' by the police. In Northern India, some of them have settled as pile-curers and pujaris. They are not only dacoits but also kidnappers.

The 'Maravars' of the Southern districts represent the descendants of a great fighting tribe which held more or less the same position in the South which the Rajputs held in Northern India. Several heads of this class are Zamindars. They

once furnished nearly the whole of the village police in the Tamil Districts. Several of them are professional thieves and gambling is a favourite pastime with them.

The Veppur Pariahs of South Arcot are a class of burglars. A large number of them are agricultural labourers, who occasionally indulge in predatory excursions.

The history of the various criminal tribes is dealt with in a series of small volumes by Rao Bahadur Papa Rao Naidu, a distinguished retired police official. The reclamation of several of these communities to peaceful and responsible life is attempted by the Salvation Army. As early as 1838, a school was opened at Jubbulpore for the education of the 'Bauries,' a tribe of professional robbers and coiners in Rajaputana, but it did not continue long.

The Government of India seek to exercise control over these classes by virtue of the provisions of Criminal Tribes Acts, the last being the Act of 1911. This empowers the District Magistrate to obtain information from the members of criminal tribes by issuing a notice to them to appear at a fixed time and place, and to take their finger-prints and maintain a register of their names and description. This book is in the keeping of the Superintendent of Police, but any entry or removal of names should be

sanctioned by the District Magistrate. The Local Government may restrict the movements of any tribe and, on enquiry, recommend its settlement for the orders of the Governor-General. It should decide also the occupation which the members of the delinquent class should follow for livelihood. The Act further provides for the establishment of industrial, agricultural and reformatory schools for the children of criminal tribes. It is very encouraging to see that several of these communities like the Pasumalas in the Kistna district voluntarily apply to be organised for a peaceful life. These tribes afford a working basis for the application of anthropological tests. Ethnographists like Thurston have only taken anthropometrical measurements of some of them, which, however, throw little light on the origin of crime. The brains of the dead may be examined with a view to discover anomalies or signs of degeneration emphasised by the school of Lombroso. Their social environment, habits of living and intellectual capacity should be investigated with a view to their reform. Since the local authorities have complete control over them, it will be convenient and advisable to apply to them the principles of criminal science, before they are adopted for the examination and treatment of other classes of offenders, and when these professional criminals are settled once for all and reclaimed into civilised society, violent

crime will be a rare phenomenon in this land.

In this connexion, it is worth while to refer briefly to the recommendations of the Jail Committee, arrived at after an examination of the settlements of various criminal tribes in India. It is deemed essential that the settlers should first and foremost be furnished a sufficient living wage. A criminal tribe should not be located at a place where its members cannot secure a comfortable living and where the temptation to revert to crime is irresistible. Commitment to settlement must not be by individuals but by gangs as a rule, lest the power of blackmail by subordinate officers become unlimited. If at all any member of a tribe should be brought under the Act, the person concerned must be given an adequate opportunity to show cause against commitment. Although the immediate managment of criminal settlements may be in the hands of private men, who had better be of the same faith as the tribe, barring accredited agents of the Salvation Army, it is necessary to provide for sufficient official supervision and control. The managers should be best acquainted with the customs, manners and language of the community entrusted to their care; it is not advisable to remove the tribes to distant regions, especially where the prevalent language is different from their mother tongue. Children need not be

separated from their parents, except where the latter are unfit for association; cottage houses are preferred to boarding schools for young men. It must be the duty of their guardians to find them employment. Work in mills and factories is recommended as more profitable than agriculture. For maintaining order in settlements, capable and vigorous men of a commanding personality must be chosen and their aim should be to enable the inmates to share in process of time in the responsible life of citizenship.

Life in similar settlements is recommended even for persons required to furnish security for good behaviour and for this purpose the Committee suggests an amendment of Section 123 of the Code of Criminal Procedure.

LECTURE VII

PHENOMENOLOGY.

PART A—CRIMES AND CRIMINAL METHODS.

The subject of this lecture is an important branch of the science. Hitherto we have studied the sources of crime and also reviewed the various ways of its classification. We shall now have a glance at the modes of crime commission in the West and in this country. Advance of Science has in a way strengthened the hands of not only the law-maker but of the law-breaker. In primitive days, theft was almost always accompanied by violence; the thief of an ear-ring would not mind tearing off the lobes of the wearer's ear in order to possess himself of the jewel. In course of time the offender against property came under the softening influence of civilisation and took to stealing when circumstances most favoured it. Thus while in rural parts robbery is the rule, clandestine theft is the order of the day in urban areas. None of the dwellers in a city like Madras can for a moment negligently leave open the shutters of his windows, lest the wily pilferer should without the least stir remove towels, coats, shirts and other articles of value that may be taken outside by means of a pole or rod calmly projected into the room.

While people in the up-country have to fear the burglar's tool, the inhabitants of the city have to be on the alert against lurking house trespass. Modern methods of the criminal have confined theft to its logical purpose without any need for enlisting violence in its aid. It is said that the purloiner's hands are smeared with glycerine for facilitating their movement into the pockets of victims in a manner to put them off their guard. In many cases the victim remains ignorant of his loss till it is too late to make any successful attempt to get at the missing thing. The means of the pickpocket became subtler and subtler till the hand was superseded by a special apparatus. Going a step further, the literate offender dispenses with the use of tools and points to his pen as the instrument with which he will publicly probe the errors or defects, mostly fancied, of those who do not grease his palm or subscribe to his views. He will not shrink from casting mud on any person whom he dislikes. Dissension or destruction is his feeding ground, and without caring for truth he will open his columns for any baseless rumour which helps him to grind his axe.

As regards crimes of violence, anarchists have resorted to dynamite as the quickest means of despatching their foes. It is quite in fitting with their destructive trend of mind. Lombroso instances the use of a deadly weapon called the

electric bludgeon in Chicago,[1] the touch of an end of which deals a strong shock to the victim. A small torpedo has also been invented as the dreaded tool of brutality, which, if slipped into the pocket of the enemy, explodes him to pieces. Likewise, throwing of vitriol betrays in a great degree the offender's savageness of heart.

Craft helps the criminal to obtain property in countless ways. A man orders goods in the name of an imaginary society with no intention of paying for them. An instance of it is furnished by the case of R. v. Rhodes (1899, 1 Queen's Bench p. 77) in which a cheat advertised for newly-laid eggs giving only the address of 'Norfolk farm diary, High Street, Mitcham Surrey' and obtained five consignments of the same from a vendor who did not get their price.

One great philosopher designated money 'Killer of persons.' Lombroso instances two doctors who, during a cholera epidemic, took advantage of the similarity of the symptoms of arsenic poisoning to those of cholera to first insure and then poison many of the patients at a place in Italy. The maxim is also illustrated in the West by homicides in connexion with insurance firms. Mr. Mitchell gives a case of fraud practised on one Safeguard Assurance Company in England which insured against burglary. A lady constituent thereof brought receipts from a jeweller

1. Lombroso, p. 58.

showing that she had purchased several valuable ornaments including a watch, a diamond ring and several brooches, which she alleged she lost by burglary. The company entertained suspicion that the jeweller who had an address but no shop was colluding with the assured and wrote his first and third receipts at the same time, though they were dated differently. Under the microscope it was found out that "the right hand side of one stamp corresponded with the left hand side of the other so that the little projections of paper left when two stamps are torn apart across the perforation exactly coincided in seventeen points." Thus was detected the deceit practised upon the company to get the value of articles alleged to be stolen but not really bought by the assured.[1]

The dreaded scourge of modern society is the professional criminal who summons up all his intellectual keenness and spirit of enterprise to prey upon the wealth of the public. In him the adventurer has got the better of the moralist and has rendered him an artist in crime. Though economically high-placed, some of the professionals are in their element only when in pursuit of their criminal plans. Sir Robert Anderson has dealt with the subject at length in his 'Crime and Criminals' and speaks out of his experience when he says 'Great crimes are the work of great

1. Mitchell Science and the Criminal, p. 9.

criminals and great criminals are very few.'[1] It is funny to see that 'Oldcan,' a thief of vast amounts and a hoarder owned a good deal of house property and brought an action against Sir Anderson for maladministration of his estate at the time when he was in prison, and claimed £ 5,000 as damages.[2] The physiognomy of an offender of this class hardly betrays any sign of congenital criminality. One Raymond whose 'face appeared to be more benevolent than that of the Archbishop of Canterbury' was notorious for his Napoleanic schemes. One of his coups was a great diamond robbery. Once when he happened to hear of the mines at Kimberly he made up his mind to commit a big theft. He went to South Africa, observed all the local details and learnt that the arrival of the diamonds at the post office from the mines was timed to catch the mail steamer for England. If there was delay the treasure had to lie there till the next mail left. He obtained wax impressions of the Post Master's keys after winning his acquaintance. Some months later he returned to South Africa and under a different name and disguise travelled to the spot at which the diamond convoys had to cross a river ferry on their way to the coast. Unstripping the chain of the ferry, he let the boat drift down the stream for a time. Then affairs took a turn as he expected and £90,000 worth of

1. Anderson's Crime and Criminal, p. 88. 2. Anderson, p. 291.

diamonds were deposited in the strong room of the post office. Now Raymond easily got possession of them and went back to England and sold them to their lawful owners in Hatton garden.[1] Whenever his movements were matters of interest to the police, this villain insisted on having a prescription from the doctor and promptly sent it to the chemist. The doctor's evidence confirmed by the chemist's book would prove that he was ill after the hour at which the police were sure they had seen him miles away. The channel gangs of thieves are said to have occasionally robbed the treasure chest of the mail steamer in a most dexterous manner.

The tricks of forgery exercise the intellect of the modern scientists. In a case of this offence, a letter was put in evidence in a dispute as to the possession of some property. It had originally contained the words 'Your house.' The 'Y' in it had been skilfully erased and the term read 'Our house.'[2] 'This erasure was revealed only by microscopical examination.'

While crimes in the West mostly bear marks of scientific knowledge, delinquency in India is generally old-fashioned in its methods which, however, indicate a degree of cunning scarcely equalled in any other country. The characteristic feature is that criminal activity is carried on by gangs of men each of whom specialises in

1. Anderson, p. 95. 2. Mitchell, p. 93.

some particular offence or mode of committing it. For instance, the Bhamptas are adepts in railway thefts. In the guise of pilgrims to Rameswaram or Tirupati, batches of these people are secretly on the look out for persons who may carry valuable bags in trains. As soon as they have found any victim, two of them enter into a friendly conversation with the traveller and learn from him where he is going and at what station he is alighting. When it is dark and others go to sleep, one of the thieves on pretext of making them more comfortable lies down on the floor and covers himself with a long piece of cloth under the pretence of going to sleep. His confederate stretches his legs on to the opposite side and spreads out his cloth with a view to screen the man lying beneath, who calmly begins to feel the bag of the victim with his hands and taking a small curved knife from his mouth, which is concealed between the gum and the upper lip, rips open its seams and takes out what he finds or transfers its contents to his own. At the next station the two get out of their carriage. Sometimes they try to effect an exchange of bags and sneak away at the first opportunity. They have acquired the habit of passing stolen articles from one to another so quickly that they cannct easily be found out unless all of the gang and their women who carry on an ostensible trade are taken by surprise and searched immediately. Their females help them to conceal articles even under

the thigh in a bandage. They assume false names and carry rings, bangles, buttons, etc., to expose them for sale on the roadside to make people believe that hawking is their means of livelihood. They mostly go in advance being entrusted with stolen articles and the males are therefore free to subject themselves to any kind of search. At times the men hold a kind of conjuring show on the roadside to attract a crowd and when the multitude is absorbed in attending to it, the confederates of the jugglers would go through the pockets of the spectators. One of their devices is in the nature of a bold step; if a passenger has several bundles of things, one of the gang would openly take a bag away and while the victim is pursuing him, the other man will secrete as much as possible of what was left behind. Sometimes escape is effected by suddenly snatching a handful of dust from the ground and dashing it in the eyes of the constable. Another method is to prick the foot of the sleeper who has kept his burden as a pillow; and when the sleeping man starts up to see what has bitten him, quick as thought the thief seizes his bundle and is a long way off. The Bhampta boys are said to entice other children by gifts of sweetmeats, copper coin or hopping insects to some secluded part where they relieve them of their ornaments.

The Barwars of Northern India disguise themselves as Fakirs and their wives are perfect

at sleights of hand. A Barwar woman would dress herself gaily and travel along with rich ladies and while the latter are engaged in their devotions, she will dexterously remove their ornaments without arousing the slightest suspicion. Similarly, the Ina Koravars do their business in bazaars and fairs; from behind the victim they use scissors unobtrusively to clip any jewel asunder and knock it down. With the spread of modern civilisation, the Koravars now bear steel trunks in their journeys and put on a more gentlemanly appearance to mask their villainy.

The Aherias of Aligar are said to pursue an artistic method. When in summer, people sleep outside their houses, small groups of these men carry long-nosed pincers and insert them between the knots of anklets, armlets, etc., and pull the jewellery apart. In order to strip a woman or a child they tickle them with fingers or feathers. Members of this tribe have been suspected in many cases of train wrecking.

The methods of burglary pursued by the Sansis of Bombay and Donga Dasaries of Madras are very picturesque. A batch of four or five of the former with their leader go to the place where they have planned their dacoity and bury or hide their weapons in some sheltered retreat or in stalks of cholam and bujra. Then they gather information about the financial status of residents

in the locality and find out the best roads to make good their escape. The rest of the gang live at the distance of a day's journey. After the preliminary preparations are made the leader tells his men off to their duties. At an appointed signal the torch is lighted and the name of their champion is invoked. Immediately torch-bearers rush into the shop or house of the victim calling out 'din', 'din', and have it all their own way.

Skilled in the art of reciting the Vedas, some of the Donga Dasaries disguise themselves as Sanyasins and gain admission into the houses of respectable people in villages. They secretly note the location of the bolts and mark their position by making a faint scratch on the door frames with a piece of glass. The breach in the wall is made close to the bolt large enough to admit of a man's hand being let in to push it. The tool for this purpose is carried in a 'Vina' called a 'chula.' In their *modus operandi*, they are compared to the Bauris of Northern India.

The Veppur Pariahs of South Arcot adopt the devices of widening the space between the wall and the eaves and of making a hole near the bolt or under the door frame.

The railway pickpockets of India are recruited from all castes and creeds. They even travel in the first and second class carriages and walk away with the boxes of co-passengers.

Goods from running rains are lifted by experts. In 1903, a second class lady traveller was robbed and, in her attempt to catch the thief, thrown out of the carriage.

It is interesting to read about a few crimes more or less peculiar to this country. An amusing specimen is furnished by the sale of women in marriage. Agents trained in the trade, kidnap or purchase girls from poor families in distant provinces and palm them off on wife-seekers, as ladies of respectable houses qualified for marriage. The matrimonial ceremony is completed and the broker receives a handsome consideration. The wife wins the favour of the husband and is entrusted with all his belongings. One day when her husband has gone out, she disappears with all the valuables and hurries to her distant home; enjoys a holiday and then in the same way becomes the spouse of another person to fleece him in like manner. This is special to the Province of Sindh.[1]

The greatest of all the troubles is the frequency of personation. When harmless, it is viewed as not at all wrongful in the eye of the public. Members of the criminal gang invariably give false names to authorities with a view to obscure previous convictions of theirs. Mr. H.L. Adam in his book on 'The Indian Criminal'

1. Sir E. Cox's 'The Police in India,' p. 323.

graphically describes a regular system of substitution and forgery carried on for twenty years in connexion with military pensions in a district of South Konkan. It was at last exposed by the Assistant Collector of the place who scented a huge conspiracy between the money-lenders or sowcars and the native pay clerks on the one hand and the families of sepoys who have perished in the service of the Government on the other. The descriptive rolls of the pensioners were pledged to the sowcars who employed 'dummies' to draw the pensions due on them, keeping the bulk of the money themselves and doling out paltry pittances to their victims. It was the duty of the Pension Pay-master to keep the rolls in a tin box and compare them with the register kept for the purpose. In course of time this was neglected. One 'dummy' represented five pensioners by appearing in five different disguises. The system would not have come to light but for an anonymous letter to the Collector that the pension of a Jamadar who was dead seven years since was still being drawn by the head man of the village. This shows how the circumstances of several crimes may remain a mystery to this day owing to the fraud of personation skilfully practised.[1]

Another highly romantic instance depicted in the pages of this author is full of human interest and puts us in mind of the proverb,

1. H. L. Adam's 'Indian Criminal' Vide p. 128-137.

'Truth is sometimes stronger than fiction.' Several lads strove for the hand of a lovely young maiden of eighteen, daughter of one Ahmed Dutt, in an Arcadian hamlet called Kumaon in the Punjab. With the tributes of her favourites, she was able to dress herself in gay attire and deck her person with expensive baubles. Rivalry for her hand caused the death of many a suitor, the mystery of which was never cleared up. She was specially beloved by two young men Naimsingh and Johar; one was wealthy, while the other was attractive. Naimsingh was away when Johar and Durali the maiden enjoyed each other's company. On one of such occasions when Naimsingh returned and was lying tired, he had the misfortune to hear himself being belittled by his rival who was playing on his whistle. His indignation knew no bounds and proved fatal to Johar. The voice of suspicion was hushed. But one Ratban, the victim's brother, took a vow that he would avenge the murder. With this in view, he wormed himself into her favour by being an abject slave at her feet. Although Durali was very faithful to Naimsing, she felt the temptation to favour Ratban and reveal to him the secret of Johar's death, because she came to understand that Naimsingh had a 'not what she was' to him but a mere convenient chattel of a wife. Ratban gained the benefit of her jealousy by getting to know every detail of his brother's murder. Of course he got

Naimsingh arrested, taken to Moulmein Jail, tried, committed and sentenced to transportation for life. Ratban was avenged but Durali repented when it was too late; then it was reported that Naimsingh died of 'atrophia' in the distant isle. Everything was calm for twenty years after which two wayfarers informed Ratban that at a fair at Hardwar they beheld Naimsingh. This message roused him again, and infuriated with excitement, he set out to search for the culprit. He succeeded in detecting him and his sweetheart and he got him re-arrested. At the second trial which caused a tremendous sensation, the question of identity became most formidable and keen. Ratban denounced Naimsingh as an escaped convict, but the prisoner denied that he was Naimsingh who was sentenced, while asserting he was only his namesake. At last the son of the man who really personated the prisoner in jail deposed to the fact of his identity and the trial ended against the escaped convict to the astonishment of the public at large.[1]

It is said that evidence by proxy was thought permissible by the unlettered. An incident happened at Khandesh in 1837 when one Kallia was personated in the witness box by a friend of his, who insisted that all the facts were perfectly true and known to the villagers. On suspicion being roused, he was questioned as to

1. H. L. Adam's 'Oriental Crime', p. 307-317.

his identity. He showed clearly that he entertained no idea that it was wrongful to personate, if the circumstances of the case were really true. He seems to have been under the impression that provided the matters stated were real it was immaterial if A or B uttered it ; so he was surprised to see that he was sentenced to a year's imprisonment for false personation.[1] Even as recently as 1908, in the district of Agra, a woman complained that a money-lender fraudulently obtained a decree against her for a sum of Rs. 250, which she never owed. The wily and unscrupulous capitalist got it by producing a witness to personate the lady and admit the alleged debt. Practice of this device is very common even to-day.

Another noteworthy crime is that of making counterfeit coins. This deserves of notice owing to the ease and simplicity of the primitive methods of manufacturing false coins. A class of coiners hail from the Bijapur District in the Bombay Presidency and are known as Chapperbands. A member of this tribe carries with him 'a pair of scissors, a bread-bladed knife, tongs, pincers, a spoon or ladle, an earthen bowl or pot, a file, some needles concealed in a bamboo tube, linseed oil and gum, a mixture of copper and tin and a small grindstone.' First a mould is prepared by oiling a good rupee and placing it

1. Sir E. Cox, p. 164-165.

between two discs of sticky clay. The clay is pressed round the coin to the depth of quarter of an inch and the rupee is taken out through a slit in the outer edge. The molten metal is then poured into the mould and after 'hardening,' it is taken out and touched up with a little milling. The fakir very often selects a woman as his victim and will pass the coin by asking change for a rupee. The soft clay for making moulds is of a brown or yellow colour: the mud being picked from the rocky banks of the Tungabhadra river and called 'Gobichandunam'. Now this class is on the decrease though the sphere of their operation is increasing. Counterfeit coins are also made by the Keechaka tribe an offshoot of the Bauris. These people excel the Chapperbands. Rao Bahadur M. Paparao Nayudu says in his book that the composition and the make of their moulds are of a better kind as they use the powder of a harder stuff, instead of mud and mix it with a gummy substance and they have an iron frame to hold the two pieces of a mould together. Mr. Lewis Moore, who was Sessions Judge of Bellary, expressed the opinion that their coins showed a high style of workmanship. A witness in a case went so far as to say that they were even superior to minted coins. The method, they say, is too dangerous for publication.

In connexion with counterfeiting may be mentioned a handkerchief incident. A variety of

this article imported from Manchester was with the likeness of ten rupee notes. The falsifiers cut out the patterns, pasted them on paper and passed them to the ignorant and the credulous in villages as genuine currency notes. The Government of India subsequently prohibited the importation of such handkerchiefs.[1] Certain clever swindlers deceive illiterate people into the belief that riches might be amassed by the doubling of currency notes. In 1915, a Moplah in South Kanara was found to attempt this feat of multiplying Government notes.

H. L. Adam calls the forger the oriental penman. In referring to forgery he says 'this crime prevails almost exclusively among the educated classes of the community, the higher castes and particularly among the wily Brahmans.' The internal economy of the country, the many and varied changes which have from time to time taken place in the individual ownership of the land, the consequent flood of litigation and the several changes in the stamp laws have all constituted a fruitful soil in which to cultivate the crime of forgery. This offence arises mostly out of a case of fraud versus fraud, as when false receipts are manufactured to meet claims based on forged promissory notes. Needless it is to refer to cases in detail. For an interesting case

1. Sir E. Cox, p. 320.

of counterfeiting and forgery of currency note, Vide H. L. Adam's Oriental Crime, p. 152 to 158.

False accusation is said to be a crime peculiar to this country. There are cases in which wounds were inflicted on a dead body and placed near the house of an enemy with a view to incriminate him at law. At Trichinopoly, an old father is said to have asked his sons to kill him and throw his body into his enemy's compound. Mr. G. D. B. Gribbles gives an instance of a case in which two fighting parties foisted the blame of their misdeeds on to a travelling merchant. A band of Madigas indulged in a sword dance in front of the bandy of a trader. The dance stirred up the indignation of the opposite party called Malas and a free fight issued between both the factions with the result that one of the latter group was severely injured and died. Both parties agreed to shift the responsibility for the crime on to the way-faring merchant.

As regards fabrication of false evidence, the Indian policeman claims our attention. He is always zealous that a culprit should be punished at any rate and believes that the court will not convict him unless there is the direct evidence of eye-witnesses. He therefore gets hold of any two persons and instructs them to aver that they witnessed the fatal deed from behind some bush or other. The case of one Malekchand, who was

accused of having murdered his beloved daughter, gives us an understanding as to the manner how even a child could be threatened into perjuring itself in the most daring fashion possible. The child was another female issue of the accused and gave false evidence against her father. She said that a policeman held a sword in his hand and told her that he would cut off her head with it if she disobeyed. Under the influence of fear she got into the witness box and stood apparently undismayed by the impressive assembly before her. Wonderfully enough, the girl satisfied the Judge and all others present at court that she was quite alive to the necessity of telling the truth. Even when the prisoner fixed his piercing eyes upon her and said, 'Golakmani, who has taught you such lying words?' the child met his gaze boldly replying with great composure, 'no one taught me, Baba, it is the truth which I have told to the Presence.' The real fact was that the prisoner aimed a stick at a bull but when he threw it, it missed its mark and victimised a daughter of his.[1]

Sometimes instinctively we are led to look for the very opposite of the circumstances which are first reported in any particular case. To hang up the body of a person who was murdered in such a way as to convey the impression that he has committed suicide is quite an ordinary proceeding. In some cases a large quantity of

1. H. L. Adam's 'Oriental Crime,' p. 77 to 87.

arsenic was detected in the intestines of victims so suspended. The fact that a corpse is found covered with wounds is no proof that death was due to violence. A Mahratta cut the throat of five of his relations in a fit of passion and then fled to the police crying 'justice, justice' foisting on his guilt to dacoits. Similarly, a Muhammadan, causing wounds on his person by himself, raised the cry that he had been attacked by robbers. He made two incisions on the fold of his shirt but there ought to have been three in the natural course of things; therefore his pretence was exposed. In the Suriyanarkoil murder case, the head of the Saivite Athinam Arumuga Desikar by name was killed by two men, one sitting on the chest and thrusting a ball of cloth into his mouth and the other perpetrating the dastardly deed by strangling. But the corpse was suspended by a rope with a view to lay the foundation for a case of suicide. The hands of the deceased were smeared with holy ashes to show that he put on his religious marks therewith in preparing for his death. Two points were observed here. Firstly, the victim had been a stout heavy man and yet scarcely any mark was left round his neck. Secondly, it was found by experiment that, from the position of the bamboo and the ladder that were set up there, it would have been impossible for the dead to have tied the nose round his neck without the cord being

tainted with ashes, but there was no mark of the ashes either on the rope or on the ladder. This case was spoilt because certain witnesses indulged in their usual flow of imagination and care was not taken to note these signs at the outset.

Cases where false accusations were made in good faith are very interesting. A man went off from his wife in a puff of anger and remained away. Weeks passed and there was no mention of him. He was for long on bad terms with his neighbour one Alikhan. Some days after the man's disappearance, a body, quite unrecognisable through decomposition, was found in the premises of a temple; at once the absent man's wife jumped to the conclusion that Alikhan had killed her husband and accordingly accused him of murder. When the trial was going on, the so-called victim walked into the court-house to the surprise of all.[1] Similarly, in a Lucknow murder case, the judge refrained from passing the sentence of death on the accused, because the body of the victim alleged to have been thrown into the Ganges was not forthcoming. A year after, the man supposed to have been murdered turned up and was found alive.

There are numerous cases in which death is caused for every trifling motive. For fear that a woman would spread ill reports of

1. Sir E. Cox. p. 266.

his secret drinking habits, a Brahman priest at Cuddapah inflicted deadly wounds upon her who had done him no injury whatever. A party of burglars caused a breach in the wall of a house, collected their plunder and while they were departing, the owner of the house discovered the last of them with his legs inside the wall, and at once focussed himself between his legs so that the thief was fixed in the hole. In order to prevent him from betraying them the thieves outside drew the sword and cut off his head and carried it with their spoils.

Anonymous letters are a characteristic feature of India. They are often intended to impeach someone's reputation. Some of them supply clues to certain mysteries; in the Surya-narkoil muddle, letters of this kind contained definite charges which warranted the making of further enquiries.

Cattle-lifting is a customary form of theft with certain predatory tribes. Large herds of sheep and bull are put in charge of boys and girls who are apt to go to sleep in the midday heat of the hot plains; just then they are stolen and borne away for an astounding distance. It is only very rarely that the aggrieved person resorts to police aid. In order to avoid the worry of courts, an amicable arrangement with the offending party is attempted. If the owner

does not suspect any one in particular, he goes to a cattle theft agent who is in touch with others of his trade for miles and miles around; takes a small fee and strives to bring the missing cattle. If he does not come to reasonable terms, then only the loser applies to the police. Some of the policemen manage to arrange terms acceptable to the owner and the agent. If the theft is not known to the local men, some tracker is requisitioned for the purpose. Trackers in Sindh, Khandesh and other parts are well versed in all the signs and marks that may be left either by man or animal. Some of them will pursue footprints for a hundred miles and more. Cattle with bells round their neck are stolen by filling the hollows of the same with thick clay. Oxen grazing on the banks of the river Indus are driven into the water to swim down for many miles and then caught and concealed in the forest on the other side. A special force known as the Riverine police has been employed in patrolling both the banks against these adventurers. It is said that several plucky constables lost their lives in attempts to arrest the thieves. Sometimes, stolen animals are purchased in good faith and have to be given up without being able to recover the price paid for them.

The tricks of the alchemist prove a fertile source of fraudulent offences against property. The story of a covetous Mullah given by H. L.

Adam is pathetically instructive.[1] A Muhammadan teacher by name Tiyabji who lived at Khadak in Bombay saved about Rs. 20,000 by dint of his frugality and niggardliness. He was beguiled by a couple of munshis who took him to a hill where their master was kneeling on a deer-skin mat. He showed a mixture of charred matter and tobacco leaf as the root of the wonderful plant called 'aksir' which possessed the power of converting copper into gold. The mullah was asked to present a copper coin and the sage placed it in his pipe and laid some of the 'aksir' over the coin and smoked calmly for a few minutes. He then suddenly knocked the ash from the pipe and in place of the copper piece, there fell out a gold coin. The two disciples along with the avaricious teacher returned home with great joy. The latter showed the coin to a goldsmith who declared it to be of the purest metal. On one Thursday, all the three paid another visit to the 'sage,' who said to the trio "I regret that the previous 'askir' is all but spent and you must know it is derived from a plant which sprouts up only at the beginning of the monsoon." Meanwhile, he wanted a suitable dwelling to tarry in. Now the mullah was obliged to leave one of his houses to the fakir. Several of his confederates approached him and prostrated themselves at his feet and sang his praises. The

1. H. L. Adam's 'Indian Criminal,' p. 179-209.

dupe was thereby deeply impressed with the greatness of the so-called saint. Many of his followers had to be rewarded out of the pocket of the mullah, who, in fear that if the sage knew him to be a miser he would be displeased and the chance of amassing thousands of rupees would be lost, was profuse in his gifts much against his own will. One day after the monsoon set in, the sage, the mullah and the munshis went to a hill to get at the sacred plant. But they were frightened driven away by the rebuke of an aged silver-haired man who violently denounced their attempts. The mullah was much perturbed by the turn of events; but the saint comforted him saying 'we should have come earlier; but have no fear brother for yet the aksir shall be ours, let us return home.' Then he asked the miser to procure a little of the copper of Damascus which had to be procured at a great cost from a single shopkeeper. Then under pretext of going to Dhalai and obtaining the juice of a mysterious plant, the mullah was fleeced of a sum of Rs. 5000 into the bargain. Lastly, a place was chosen where the sage showed gold ground to dust at the bottom of a basin-like receptacle. The spot was lighted only by a cocoanut oil lamp. Into the basin he poured an yellow liquid which he said had been distilled from the plant at Dhalai. Finally, he proposed:—'It now remains to keep stirring the liquid with this steel rod for the space of 7 days;

this must be done by every one of us taking turns while the rest retired. We must work in spells of four hours each. Should the stirring be interrupted all our labours lie in waste." He sat first and stirred the mixture for four hours and it was the turn of the mullah next to keep stirring. The mullah relieved the sage and was working at the pot for another four hours, after the lapse of which nobody came to relieve him; but he could not give up the task, so he stirred on and on till his mind became chaotic and his body benumbed from head to foot. At last he rolled over and fell into a deep sleep; after a time he was aroused by one of the munshis to see the spell broken and sage gone off. The contents of the vessel were examined and to his intense dismay and disappointment, the supposed gold dust was mere brass; the mullah's ruin was complete. To crown all, one of the rougish munshis asked him to get meals for a few copper coins which were really counterfeit ones, and at the instigation of another heartless companion, the mullah was arrested by the police on a charge of attempting to pass bad money. Although he maintained his innocence, he was convicted and sentenced to imprisonment. In this case, all the persons concerned including the goldsmith, who tested the coin, and the vendor of Damascus copper, acted in concert as confederates in a criminal exploit systematically planned and carried out.

In the Bombay Presidency, there was a band of criminals called 'The Iron Safe Gang' notorious for its subtle confidence tricks, in each of which an iron safe played an important part. One of the cases is interesting. A big merchant was requested by a member of the gang to purchase a good number of jewels and precious stones from them. He wished to see some of the articles and was therefore required to visit the bungalow where members of the gang were staying. When he went there, he was shown some old-fashioned trinkets placed in a box. He desired them to bring all their valuables to the bungalow and when they pleaded lack of funds, gave them a sum of Rs. 50 for transit charges. It was arranged that within four days the property should be taken to the bungalow. Subsequently when the purchaser went there and enquired about the safe, he got the reply that it was hidden under the ground in a jungle hard by, and it was proposed that the safe should be dug up in a dark night and taken away on a bullock-cart to the merchant's house. But the gang wanted that they must be paid in advance a lakh of rupees before possession was given to him. The buyer agreed to pay Rs. 10,000 beforehand. The next night he resorted to the appointed spot in the jungle with great difficulty and was satisfied at the sight of the safe. Directly, he called in the driver of the vehicle, who made a great noise at which the merchant was alarmed

and prayed the cartman to keep quiet. Just at that time a stranger made his appearance on the scene and wanted to know what others were doing in the jungle at that time of night. The questioner was pacified by a gift of money. However, as the merchant came back to the outskirts of the forest, some of the policemen appeared and wished to know what the safe contained. At this juncture several sepoys also put in their presence and the merchant took to heels to make good his escape. Now, the stranger, the policemen and the sepoys were all mere confederates of the gang. Thus the trader was defrauded of more than Rs. 15,000 for nothing in return. This party was arrested redhanded, and brought to book by the able police officer Sardar Abdul Ali of Bombay. [1]

It will be interesting to note that a traveller in the Etah district narrowly escaped murder by the police. In the course of his journey, he put up at a police station one evening for the safety of his purse, and informed the Sub-Inspector of the matter and got his permission to stay there. This officer advised him to put his money bag under the pillow. Accordingly, he lay down with his purse but did not go to sleep at once; when, he overheard the policemen who thought him asleep planning to murder him. The Inspector directed

1. H. L. Adam's 'Indian Criminal,' p. 159 to 168.

his subordinates to have a grave dug large enough to hold the victim and his bed, and left for the evening meal. The traveller opportunely enough crept out of the station with his money bag and hid himself on a neighbouring shady tree. When the Inspector returned, he found the bed vacant while his assistants had gone to dig the grave. Under the impression that the traveller had run away, he dismissed the projected crime and laid himself down on the bed and went to sleep. The assistants who returned struck the fatal blow on the neck of the Inspector, but found they had made a blunder when it was too late. The man on the tree saw all these things and divulged the whole affair to an European Officer. This incident reminds us of the dangerous wily practice of the Thugs. These villains formed a free masonry of 'inveiglers,' 'garroteers' and grave diggers. The inveigler approached the victim first, ingratiated himself into his good graces and carried on a confidential talk with him, while the 'garroteer' at a given signal noiselessly stepped up behind him, deftly cast the handkerchief round his neck and gave it a sudden twist with the knuckles; at once the grave diggers who had the pit ready for the burial of the victim did their work in the twinkling of an eye. Thousands of people mysteriously disappeared in this way till the Thugs were put down by Lord William Bentick.

Superstition has been from ancient times a prolific source of criminality. Till recently, witch-swinging was a frequent occurrence in Rajaputana. Human sacrifices were common among the savage tribes like the Khonds and the Bhils. In the year 1871, a Khond priest, excited by blood-thirsty superstition and by potation of strong drinks at a buffalo sacrifice, suddenly grasped his sacrificial knife and cut the throat of a boy who was standing by. Needless it is to add instances.

Indulgence in violent and unnecessary carnage is often the baneful result of accursed family enmity. In 1917, on a matrimonial question, there was a difference of opinion between husband and wife; the husband murdered his own son and a son of his neighbour for taking sides with his wife. A man in Ganjam, in a dispute for division of family assets, cut his father's throat, caused serious injuries to his wife, and himself died on the railway. In 1918, members of two families in a place in the Madura District quarrelled over the loss of a sheep, with the result that two members of the one side rushed out and killed four of the other at a single stroke. In 1919, the ill-feeling between a wealthy man and his son created a faction among near relations, and the father caused his own maternal uncle to be murdered by his partisans. Eight persons were charged with the offence. In North Malabar, the Karnavan of

a tarvard was knocked down by three of his younger brothers and hacked to death for mismanagement of the family properties. In 1921, the partisans of a Koppu family in Cuddapah waylaid members of another with whom they were at enmity and killed four at a time causing injuries to not less than five of them.

Poisoning is a fine art in India. It is mainly resorted to for economic purposes. The poisoner works under a variety of disguises, not killing his victim always. Like a respectable man he hires a carriage ; drugs the driver and makes off with the animals and the vehicle. Sometimes, he offers to draw drinking water from a well by way of relieving women who go to fetch water, and unperceived, drops a 'little something' into it. The thief who scrapes an acquaintance with a young lady decked with jewellery stupefies her with betel leaves and knocks down the trinkets on her. Poisoning sometimes takes place in a mysterious manner. In Bombay, a certain peon, purporting to be sent by a relation of a gentleman, left a packet of confectionery in his house. The sweetmeat was distributed to the relatives of the gentleman and all who ate of it were poisoned. On investigation by the police, it was discovered that the peon who brought the confectionery was murdered and his body buried in a nullah.[1] 'The unmasking

1. Sir E. Cox, p. 294.

of the subtle poisoner in the East constitutes a performance of no mean metaphysical achievement.' The following small incident will show how inscrutable the poisoning may be. A prisoner so ingratiated himself into the good graces of the police officials that he was allowed to enter his own house. He brought some sweetmeat and proferred the same to them; while, he appeared to eat of it. However, soon after the policemen partook of it, they fell senseless on the road and the poisoner beat a hasty retreat. In another case of poisoning, a suspect was taken to the complainant who said that he resembled the real poisoner. At once the accused said that he had a store of poisonous drugs in his house at Mamudabad—a place hundred miles off. On principle of neglecting no chance. Sathya, the Inspector, took the man to the said town. After a fruitless search for the drugs in that place, he, an old jail bird, calmly told the police officer that he had made a confession only in order to get a cheap trip home, his railway fare being paid by the Government.

'The vegetable drugs used in India elude chemical analysis; many of them grow on the way side and it is hard to legislate forbidding their use.' Arsenic is largely used in Madras, Bombay and the Punjab. Opium poisoning prevails much in Bengal; aconite, powdered glass, and strychnine are used sometimes in cities. The juice of several indigenous plants like the yellow

oleander, the calchitra, madar, etc. is largely in use in rural parts.

The Datura seed which is very commonly used is highly injurious in its results. It cripples a person even seven years after. Sometimes it impedes articulation of sounds as in paralysis. Deaths brought about by the use of this poison are frequently ascribed to disease, suicide or attack by wild beasts. In case of recovery, the victim is often induced to maintain silence from fear of a charge of drunkenness. One of the most frequent effects of the drug is to deprive the sufferer of his memory, so that he cannot be a good witness of the deed. The effects of its poisoning are exceedingly painful; the mouth and the throat become so dry that the swallowing of even liquid food becomes next to impossible for a time. Vision is deranged; letters and figures appear double. It causes a delirium and the victim reels like a drunken man and is cowed down by an angry word. If administered in slow degrees, it causes permanent idiocy.

Poisons are used as 'aphrodisiacs, depilatories, seductives, intoxicants and exhilarants.'[1] Poisoners sometimes figure as marriage agents; they often play a leading part in compassing the death of leaders of hostile parties. Drugs are also largely used for committing suicide. Between 1896-1900, in Calcutta, nearly 55 per cent. of cases

1. J. Adam's Criminal Investigation, p. 652 to 683.

of suicide were due to poisoning. Accidental cases of poisoning occurs in the adulteration of milk and the use of grains frequently becoming diseased.

As regards political offences in this country, the main causes are the domination of a foreign Government and the influx of western revolutionary ideas. The first indications of a reactionary movement were among the Chitpavan Brahmans of Poona to whom the Peshwas belonged. There the seditious agitation began with the conduct of Ganapathi festival in the year 1894. Later on in 1895, the memory of Sivaji was revived by holding an annual feast for celebrating his coronation and stirring speeches recalling the power of the hero were made on the occasion. In the year 1897, certain publications in a Marathi paper named *Kesari* were seditious and the editor of the same (*i.e.* Bala Gangadhar Tilak) was prosecuted. On the 22nd June, 1897, *i. e.* the day of the 60th anniversary of the Coronation of Queen Victoria, two Government officers were murdered by two brothers Damodar and Balakrishna Chapekar at Poona, who were in consequence convicted and punished. These men had formed a secret club for physical and military training. It was called 'The society for the removal of obstacles to the Hindu religion.' Afterwards one Shyamajai Krishna Varma, a native of Kathiawar, betook himself to London and after having lived for

sometime in obscurity started the India Home Rule Society in January 1905, of which he was himself the President and pubished a journal called 'The Indian Sociologist.' He collected some recruits in London of whom one was Vinayak Savarkar who became the leader of a secret society of students in Poona started in the year 1906. In subsequent years, Krishna Varma's agitation in England became so formidable as to attract the attention of the House of Commons. The result was that the printer of the Indian Sociologist was prosecuted and convicted in July 1909. Krishna Varma by that time had taken up his residence in Paris and occasionally visited London only for controlling the work done. About the year 1907, he preached the pursuit of Russian methods by the Indian agitators. In 1908, the anniversary of the Great Indian Mutiny was celebrated as a national festival at the office called the 'Indian House.' In June 1908, a Hindu student of the London University gave there a lecture on the making of bombs. In 1909, Vinayak Savarkar became the acknowledged leader and the Indian Mutiny was described in a book as the 'Indian War of Independence'. The policy of assassination adopted by members of the 'India House' found its first victim in Colonel Sir William Curzon Willie, and there was another murder in December 1909, when Mr. Jackson was shot dead in Bombay. At Ahmedabad, Lord and Lady Minto narrowly escaped from bombs which were thrown at them.

In 1910, the secret society at Satara was found experimenting on the preparation of bombs. In 1913, Lord Hardinge was slightly wounded. In Bombay, all the conspiracies were mostly by the Chitapavan class of Brahmans who were also remarkable for their intellectual capacity. The movement had connexion only with Paris plotters and not with any other in India. Finally, in 1914, Mr. Tilak disclaimed hostility to Government and disapproved of acts of violence committed in different parts of India.

In Bengal, the seditious movement was begun in 1902 by Barindra Kumar Ghose, who was born in England in 1880 and brought to India as a child. Barindra attempted to start secret societies throughout the Province. The movement got an impetus during the time of Lord Curzon whose measures were to the distaste of Indian politicians. The partition of Bengal strengthened the agitation. Barindra conducted the 'Juganda' newspaper and at Manicktolla Gardens near Calcutta, secret preparations were made to wage war against the King. The members of the conspiracy aimed at the subversion of the British Government by violent means. For the purpose of finance, they planned a number of dacoities to be committed with the aid of modern scientific appliances against their countrymen. Barindra and his party were convicted in 1909. Murder by bomb was a characteristic of political

crime in Bengal, and the persons committing these outrages belonged to respectable classes. Bernhardi, in his book 'Germany and the next war' published in 1911, has indicated the fact of German hope in the revolutionary movement in Bengal. In the Punjab, one Haridayal started the agitation in 1905. In Madras, there was an agitation in 1907 during Bepinchandra Pal's lecturing tour in the presidency. Except the Tinnevelly riots and the Ash murder conspiracy, there were no serious political offences and the people were very little affected in Madras unlike in Bombay or Bengal. The whole of the movement against the Government is treated in detail in the Sedition Committee's Report published by the Rowlatt Commission in 1918. Of the Moplah rebellion and the non-co-operation movement of the day nothing need be said for the time being.

India is a country whose soil has always been a fertile hunting ground for plunderers, marauders, robbers and thieves. Historically, the Pindari depredations were so extensive that they had to be subdued by a strong military power. Many of the crimimal classes that now exist come under the provisions of the Criminal Tribes Act of 1911, according to which every member of the class is registered as such and his movement keenly watched by the Police.

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PART B.

PHYSICAL & PSYCHICAL PECULIARITIES OF THE CRIMINAL.

We shall now refer to the peculiarities and practices of congential delinquents and other classes of criminals as investigated by modern criminologists. The instinctive offender is called the 'criminal man' by Lombroso. His characteristics physical and psychical are briefly mentioned in his daughter's book on the subject.

The head of the born criminal is longer or smaller than the average skull common to his native region. His cephalic index ranges between 73 and 100 C. C. while the normal is about 92 C.C. The formation of the cranium is in many cases asymmetrical with protuberances; sometimes it terminates in a peak on the bregma or is depressed in the middle with crests or grooves along the sutures. The cranial bones are abnormally thick being double that of normal individuals, or they are unusually thin. Thickness prevails in 36·6 per cent. of the cases and thinness in 8·10 per cent. Other chief anomalies are: (1) wormian bones in the sutures of the skull (in the case of about 21·22 per cent),(2) prominent frontal sinuses, (3) semi-circular line of the temples, (4) the median the occipital fossa and receding foreheads as in apes recognised even in Indian Samudrika-lakshanam. Excessive development of the temporal muscles is also a marked simian characteristic.

The face presents a disproportionate appearance in contrast to a narrow forehead and low vault of the skull. From this it is inferred that there is a greater development of the senses than of the nervous system. Prognathism is the most marked trait in about 45·7 per cent. of criminals. Another phenomenon next in importance to this is the projection of the lower jaw and teeth beyond the upper lips. The development of the masticatory system is a feature not necessarily atavistic but perhaps due to the habit of certain gestures, the setting of the teeth and tension of the muscles of the mouth. The eyes and ears of the congenital culprit are frequently situated at different levels and are of unequal size. Psychically the eye is hard of expression and is distinguished by shifty glances. The drooping of the eyelid called ptosis gives the eye a half-closed appearance. Strabismus is bad only if it is a sign of the disease of the brain or its membranes. The iris may differ in colour in the two eyes. Sometimes the eyelids are oblique; in certain cases there is a prolongation of the internal fold thereof which marks a persistence of embryonic characters.

The ears are handle-shaped in some cases and stand out from the face. They may be mishappen, devoid of helix or tragus and with a protuberance on the upper part of the posterior margin (called Darwin's tubercle). The lobes are

often close to the face or are of huge size as in ancient Egyptians or atrophied as in apes. The nose presents a twisted upturned appearance or is of a flattened negroid character, and the trilobate has its tip rising like an isolated peak from the swollen nostrils. A slanting nose is also regarded as a peculiarity. It is said that a twisted or flattened nose betrays a thief, while murderers have an aquiline one.

The mouth presents a number of anomalies. A bony elevation at the angle of the jaw is called lemurine-apophysis. The canine fossa as in dogs is a depression in the upper jaw for the attachment of the canine muscle. Hairlip is another characteristic of criminals. While swindlers have straight lips, violators of women and murderers have their lips fleshy, swollen and protruding. Some have even cheekpouches. The cleft palate is viewed as an index of organic delinquency. In the palate, there is at times a central ridge or a series of cavities and protuberances corresponding to the palatal teeth of reptiles. Criminals have rarely normal dentition. Abnormal development of the middle incisors and the absence of the lateral ones are common. The existence of spaces between upper teeth into which the lower ones fit is another mark of the inferior animals. Some bones show a premature decay. The chin is sometimes small and receding or flat as in apes.

In respect of teeth there may be tubercles in premolars. The abundance, variety and precocity of wrinkles, horizontal or vertical lines on the forehead and circumflex lines at the root of the nose are said to be the peculiar features of born criminals.

As regards hair, offenders of each sex tend to exhibit characteristics of the other. Dark hair is prevalent in murderers, while it is curly and woolly in swindlers. The forehead is covered with down; the eye-brows are bushy and sometimes meet across the nose, the hair growing in a slanting direction. The increase or decrease of ribs in the thorax is common to animals and lower races. The presence of supernumerary nipples below the chest is a common anomaly. Abundance of tough hair on the chest is also found specially in criminals. Corresponding to polymastia in males there may be gynecomasia in females, *i.e.*, the absence of nipples. The hypertrophy of the mammæ is more frequent in male criminals; in females there is an imperfect development of the same. The pelvis and the abdomen sometimes show an inversion of sex characters. In 42 per cent. of delinquents the sacral canal is uncovered. A prolongation of the coccyx like the stump of a tail is one of the most striking peculiarities. Excessive length of the arms owing to which their span exceeds their total height is an apish

characteristic. The olecranon foramen is found in about 6 per cent. It is a perforation in the head of the humerus where it articulates with the ulna. This is frequently found in the bones of the prehistoric men. Polydactylism is said to be atavistic. Lines on the palmar surfaces are often of a simple nature in criminals unlike in normals, *i.e.*, reduced to one or two of horizontal or transverse lines as in the case of apes. Long fingers are common to swindlers, thieves, sexual offenders and pickpockets. The wider spaces between the toes and the greater length of the big toe than in normals are special characteristics. Corresponding to the prehensile paw of animals the foot of the criminal is flat.

Among the internal organs the brain is the most important. Microscopic anomalies in the left hemisphere of the cerebrum and the cerebellum are correlated to sensory and functional left-handedness. Cerebral anomalies consist mainly of anastomotic folds; the doubling of the fissure of Rolando and the existence of a fourth frontal convolution. Of histological marks, the prevalence of large pyramidal and polymorphous cells in the upper layers and the abundance of nervous cells in the white substance are common to born criminals and epileptics. Of the pathological defects of the cerebrum, adhesion of the meninges, thickening of the piamater, the congestion of the meninges and the seaming of the

optic thalami and strophy of the corpus collosum are important.

Hitherto we have been considering the physical peculiarities of born criminals. Their sensory and functional anomalies deserve our attention. Their general sensibility is more obtuse than in normals and it is keener on the left side. Insensibility to pain and touch was detected by Lombroso in 16 per cent. of criminals. Sensibility to the magnet is a very marked characteristic in 48 per cent. of born delinquents while it is very rare in normals. The sight of the criminal is colour-blind but acute. Hearing, smell and taste are less acute than in the case of other men. Meteoric sensibility is a feature which appears to be common to delinquents and insanes; variations of temperature and atmospheric pressure produce changes of disposition and sensation. The strength of the criminal is not very extraordinary but his agility is very great even in old age. Ambidexterity is marked in criminal children.

The psychological traits of delinquents are very interesting. While the criminal shows little attachment to the family he is fond of animals and makes pets of birds. Sometimes he attends on the sick with great devotion. When an offender dimly realises the depravity of his action he seeks to explain and support his deed after his own fashion. Some of the criminals are under

the impression that the end justifies the means. 'London thieves,' says Mayhew, 'realise that they do wrong but they think they are no worse than ordinary bankrupts. The constant perusal of newspaper reports leads them to believe that there are a great many rogues in higher circles. This shows that they have the power to distingush between right and wrong.'

But some of them are absolutely lacking in the moral sense although they feign repentance and talk of pious sentiments. Lacenaire pretended once saying 'Repentance is the only course left to me'; later on he stated the truth that he had never experienced remorse. With offenders what seems repentance is only fear of death or some superstitious belief. A criminal wanted to be allowed to keep his crucifix with him; it really served as a sheath for his dagger. A murderer said to a friend of his 'This evening I shall dig a grave and lay my father to rest.' A thief once said to Lombroso: 'I do not steal, I only relieve the rich of their superfluous wealth.' Some highway robbers call the moneyless rogues and vent their rage on them. The cynicism of the criminal is well-known. One prisoner called Philippe said 'My delight is to strangle a woman after enjoying her.' Emotional instability is a remarkable characteristic. Incapacity for sustained action is combined with ability to act violently at certain moments. This defect is increased by

a craving for powerful stimulus and love of orgies. Alcohol, gambling and all forms of sexual excitement induce instability in one's temper. For the criminal's outbrust the monotony of prison life is also largely responsible. Many are prone to betray their companions for personal advance or for injuring those they envy or suspect of treachery towards themselves. Their vanity knows no bounds. It is said that Lacenaire was less troubled by the death sentence than by the adverse criticism of his bad verse. A petty thief would speak at court of imaginary offences with a vain desire to figure as a great criminal. The worst villains commit crime for their morbid love of it. A thief said to Lombroso 'It is my blood ; it may be only a pin but I cannot help taking it although I am quite ready to give it back to the owner.' Some are said to have photographed themselves in the very act of murder. About the cruelty of this category no dilation is necessary. When the post of executioner was offered in a prison many competed for it. One said 'my delight is in stabbing.' In the matter of faith they are creatures of superstition. Murderers are said to fast when meditating a fresh assassination. It is said that prostitutes place the image of the virgin near their bed. It appears that religion in a way satisfies the primitive emotional nature of the criminal.

The philosophy of criminals throws much light on their mental attitude. First of all the

delinquent is confident that the public opinion of his class will acquit him; only, to be caught is the foolish part of the business. He bases his justification on the vices of respectable society. A Milanese thief raised the question: 'Do not advocates and merchants rob? Why accuse me rather than them?' A murderer confessed: 'Knowing that three-fourths of the social virtues are cowardly vices, I thought that the open assault of a prisoner would be less ignoble than the combinations of fraud.' Another robber exclaimed: 'To attack large sums I consider a speculation rather than theft.' The leader of a group of banditti while dividing his spoils among his followers stated that he was practising natural justice while what was protected by social laws was artificial equity. A chief of brigands moralised to his judge: 'God has sent us on earth to punish the avaricious and the rich,' and another made the following remark: 'God has given us the instinct to steal. He has given others the instinct to imprison us; the world is an amusing theatre.'[1]

As regards books, Dr. Ellis[2] says that many prisoners have a fondness for stories of romance and adventure like Alexander Dumas's novels. Essays glorifying offenders and discussing the minutiæ of trials attract them as well. Russian criminals are said to be impressionable to

1. Ellis, p. 196.

2. Ellis, p. 176.

literature. Literary expressiveness in prison manifests itself in criminal songs; some of them being even in praise of prisons. Fine notes of despair and songs against the judges and the police are quite noteworthy. Sometimes their ballads breathe vengeance for a slain friend. The criminal art is not beautiful but rough and expressive. They take to painting men hanging from gallows, nude women and perverse sexual attitudes. Drawings on walls, drinking vessels, planks of beds, margin of books and clothing are indicative of mental vacuity. While Italian inscriptions are sentimental, reflective and imprecatory, the English ones are practical, blunt and material. Even moral exhortations are found in some of these.

The slang of these men gives an insight into their mental processes. Dr. Joly says that the imagination of the criminal transforms persons into things and assimilates men to animals. As regards tatooing, Aschaffenburg depreciates it from a psychological point of view. Laccasagne says that it is a species of heraldry. Lombroso regards it as a peculiarity of the criminal man. Its significance consists (1) in the number of signs described on a person, about 20 or 30 tatoo marks being found on some prisoners, (2) its location on the body as on the back and the sexual organ, and (3) in the subjects of tatooing which depict vengeance and vanity in boast of virility. Some

of the tatoo marks are expressive of higher emotions like recollections of childhood and the memory of friends. Erotic passion leads to the painting of the grossest emblem of unnatural vice. Tatooing is rare among women except prostitutes. Among the insane, it is on arms and hands and is mainly of religious symbols. Sometimes it coincides with the period of sexual development. For instance, in Sicily, it is said that no one is tatooed after the 20th year. It is often due to imitation and idleness prolonged at the sea, the prison, the hospital and the barracks. An investigation of the criminal's ways of artistic expression will help us a good deal to understand the mental level of his and shape the treatment that should be accorded to him for the best utilisation of his energies. 'The vulgar sand which you tread underfoot becomes brilliant crystal when it has passed through the furnace; the dregs may become useful if you know how to employ them.'

LECTURE VIII

DETECTION OF CRIME AND EXAMINATION OF CRIMINALS.

In this lecture, we shall study how criminals should be detected by the executive officer, tried by the judge and the jury, and examined by the scientist for treatment according to modern methods. It should first be established whether the act alleged to be a crime is really such or due to an innocent agency or accidental or natural circumstances. For instance, things may be set on fire owing to a variety of physical causes. Burning may result from the rays of the sun being concentrated at a particular spot through the photographic lens. Spontaneous combustion arises when free carbon, especially coal dust, is rich in sulphur. In cases of alleged murder or suicide, there may be no offence at all. For example, an old man, left in charge of two servants died of apoplexy, the latter being away at the time of death. When they returned, they hung up the dead body with a view to fabricate evidence for suicide. Similarly, the victim in a case of alleged murder really died of a fall from a bridge badly protected.

Criminal investigation by the detective officer precedes the enquiry by the judge and it has undergone three phases in the course of its history; at first, there was the enlistment of the *personnel* of the police from the army of delinquents in the spirit of the proverb, 'Set a thief to catch a thief.' The village watch is an illustration of this phase. The watchman was obliged to make up the amount of the value of the articles stolen as far as his means permitted and the remainder was levied from the whole village. The sphere of his work was limited only to a small area around the village. No doubt the village watchman had traditional aptitudes in tracing out and detecting criminals, but he was powerless against ruffians harboured by tyrannical landholders to enforce their will on the people. Sometimes the village had to fear its watchmen, for, if they grew unruly owing to laxity of discipline or absence of supervision, they levied exorbitant contributions and taxes. House-owners had to pay to save their houses from being burnt, and landlords, to save their crops from being robbed or destroyed. The Kaval system represented a mutual compromise and was due to geographical accidents. It was too feeble to operate successfully against the Pindaris and the Poligars with their armed retainers or organised gangs of dacoits.

The present village police is constituted under the provisions of the Village Police Act VIII of

1867, and works directly under the supervision of the Collector who is often too busy to see to the orderly performance of its duties. It has no direct connexion with the District Superintendent of Police. The chief defect has been that almost every village is divided into two or more rival factions and the head-man who belongs to one of them shrinks from punishing an offender lest he should incur the enmity of his own party. In the year 1901, no less than 14,958 patels tried only 3,126 persons in the Bombay Presidency, according to Sir E. Cox. The village officers who are under paid are said to be actually at the bottom of much concerted crime. It is suggested that men with a modicum of good training would do better than the existing 'tag-rag and bobtail crew.'

The next phase of criminal investigation is called the empirical one in which with the aid of mere natural faculties, persons enlisted from the good public strive to probe the sources of crime. Several men have distinguished themselves in various countries like Vidocq in France and Ave 'Lallmant in Germany. In India, Mr. H. L. Adam, the author of 'The Indian Criminal', has recorded his high appreciation of the services of Sirdar Mir Abdul Ali of the Bombay Police.

The trackers of India are famous for keen, skilful and persevering observation. The Khojas of Northern India are able to trace stolen cattle even through gravel beds and over rivers and

swamps. A member of the community is trained from his infancy to recognise the most imperceptible signs of footsteps on the way. Where these detectives abound, the fugitive criminal hits upon the device of rolling a cloth round his feet, walking for a little while on all fours, going backward or crossing a stream or river; but the tracker is not led into error by any of these tricks.[1] In Kashmir, a Khoji followed an assassin for about two hundred miles through hills and dales by following his foot-prints and succeeded in the end. Some of them know the foot-prints of every person within a certain perimeter just as we remember human faces. In one case, the tracker lost the trace in the midst of more than 200 foot-prints and yet he managed to fix that of the thief in memory, and find him out after pursuing him for about eight days. In these adventures the detective is not sure of his life because he may be victimised by the offender at any time.

The study of foot-prints has been developed according to scientific methods in Germany. Frederick Paul Olmuts' 'Study of the Hidden Prints' is full of scientific instruction. The difficulty lies in that they are rarely in a complete form and hence regarded as not likely to be useful. The first step in this direction has been made by the well-known system of photography of men running. A series of

1. J. Adam's Criminal Investigation, pp. 490, 491.

views of foot-prints is obtained by instantaneous photography. In America, three photcs of a man running were taken at the same time, one from the front, the second from behind and the third from the side. Three cameras were used, each containing twelve plates and worked by electricity.[1] Photographing from below is done by placing a ladder at a certain height and in a horizontal position covered with plates of very strong crystal over which a man walks bare foot. To observe foot-prints in a European town is very hard, as no prints are left on the pavement. Sometimes the mode is adopted of selecting from among several foot-prints which follow or cross one another, those of one particular person and of determining whether they belong to a man or woman, a tall or short person or to a walker or runner. At every step the accuracy of the supposition made must be verified. The footprints of every individual whom one chances to meet must be accurately observed, and correlated with the information one may have been able to obtain regarding that person. The peculiarities of taking steps should be carefully noted. It should be noted how these vary with stamping, shaking, loitering or limping or walking with bow-legs and whether the foot-prints produced in various cases can be associated causatively with the peculiarity of action or the physical forms. For instance, if the shoe or heel make a very deep impression on

1. J. Adam's Criminal Investigation, p. 484.

the ground, it may be the effect of chance or of a peculiarity of the person. If it is found in the same form at all times, then a causal connexion may be inferred. Accurate copies of foot-prints may also be taken with the aid of scientific materials. The impressions of the foot of persons of different ages and of both the sexes in varied walks of life should be taken and studied carefully. Attention may also be paid to peculiarities of gait. If it be a question of booted foot, an intelligent cobbler can always give useful information as to whether the shape of the shoe is common in the neighbourhood, whether the boot has been repaired and what class of persons are in the habit of wearing the same and whether it wears out more on one toe than another. Similarly, the skilful and experienced sportsman may be consulted, for he is likely to see traces in a spot where another would hardly be able to discern any mark and he may also know what influence the temperature has on traces and at what speed an animal has travelled.

Hans Gross says that "the booted foot gives more clues than the bare one," for "the plant of the latter leaves always a rounded impression and never presents fixed borders like the sole of the shoe."[1] The processes to be employed for the impressions of booted and bare feet are quite different. When a criminal crosses a room bare-

1. J. Adam's Criminal Investigation, p. 496.

foot, the perspiration leaves hidden prints which may be recognised with the help of chemical acids, and this may also be done with reference to traces of hand upon any substance. In the case of barefoot prints on wood, the best results have been obtained by using a solution of nitrate of silver. Frederic Paul gives a list of clearly distinguishable materials which make copies of hand and foot on smooth flat surfaces, *viz.* "powdered washing blue, powdered iron, soot carbine, cinnabar, aniline colours, brimstone of antimony, etc."[1] The difference between an impression and a print is that the former is produced on earth, mud, clay, snow or other soft material and as such more frequent than the print which represents marks on more solid substances. Investigating officers who approach scenes of violent offences should take care to keep at a distance and search for the impressions of the culprit about the spot.

The mechanism of walking should be understood in order to note the twists observable in clean foot-prints from the inside edge of the foot towards the ball of the little toe. From the fashion of such curves, the speed of the walker is often deduced.[2] The back part of the heel gives the strongest impulsion and should therefore appear much more strongly impressed than the

1. J. Adam's Criminal Investigation, p. 501.
2. Adam, p. 507.

rest of it. The exterior edge of the front does not remain where it is placed. It glides a little outwardly and only at that point produces the deepest notch. This should be remembered when a foot is compared with its impression or print. If the ground is firm enough to receive only strong pressure, two marks alone in the form of an arch will be distinctly left by the posterior rim of the heel and the anterior edge of the sole respectively. The former has a notch; while the latter has a thrust. The whole foot-print must be completed by dots. If one succeeds in obtaining these marks, the length of the foot is secured and it may be ascertained whether the prints belong to a person who walks quickly or carries a burden. Distinctive marks are produced in sand, dirt and thick mud according to the manner of marching. The aged, inform and weak persons leave dragging impressions behind them. In every case, verification is necessary by making people walk under similar circumstances.

Running is essentially different from walking, for in it so much impulse is produced that the body receives a push forward and the leg does not fall at the spot where it could have fallen naturally, but comes down at a distance further in front proportionately to the force of impulsion. The more violent the impulse, the longer the body rests in the air and the further it goes forward according to the laws of motion and the foot

comes to ground a certain space in advance. Only, the measure of activity is not uniform in running. The impression of the heel is here deeper than that of the ball of the toe. The pace diminishes with age; if the length of it is unequal, it may be that the person limps, either actually or by accident. The step of the diseased foot is shorter than that of the sound one. Simulated foot-prints should be cautiously noticed. They are found when the criminal indicates a wrong direction or when a case of murder is sought to be passed off as one of suicide or *vice versa*. In suicide, the foot-prints of only one man are managed to be left; while in murder, those of several might be expected to mark the place. This is done by tying to the foot shoes placed the wrong way round.[1] To cast suspicion on others, the criminal sometimes produces clear foot-prints with woman's shoes.

The methods of preserving foot-prints are elaborately dealt with by Hans Gross. The most radical method of preserving these is to carry away the original impression. This is done by placing round it an iron coffin as large and as deep as possible. The soil is then dug all round it by a spade so that the foot-print enclosed in the coffin rests upon a little mound isolated from the rest of the neighbouring ground. This is not, however, a convenient mode of taking it to distant places.

1. J. 'Adam's Criminal Investigation, p. 513, 514.

Other ways are by the use of materials fitted for taking the same. Just like the marks of the foot, all traces produced on some soft substance ought not to be neglected. The marks of horses may be important in certain cases and even those of a carriage may become serviceable at times.

Apart from the physical marks left by criminals, it is essential for the investigator to study the slang and signals employed by them for secret communications among themselves. In India, many of the criminal tribes like the Sansis, the Barwars, the Chapperbunds, the Bhamptas and the Kuravars have peculiar expressions and watchwords unintelligible to others. The watchword of the Sansis is 'Lakhara Khan Bhai.' The Chapperbunds use the term 'Thairi' to signify a genuine coin, and the word 'Agoo' to denote a false one. The Tamil slang of Koravars may also be instanced. Thapigadu means a receiver; Vasapadi signifies a house-breaking implement; Kappan means a constable; Wola Moonjee signifies an Englishman; Tulla-wassul means a door; Pumla a girl of a dacoit; Oopun signifies a girl of a villager or stranger or in the house to be attacked; Pooloo means ornaments; Kaimears means one hundred; Burgai means one thousand; and so forth. A few tribes like the Mullahs in the north and the Marawars in the south appear to possess no jargon of their own.

Besides hiding their meaning in this way, the criminal classes have secret modes of communication by means of signs and signals. As early as 1540, Ludwig Bechstein published a book called the 'Signs and Words of Command of Incendiaries';[1] an arrow with several oblique strokes showed a house to be burnt; a shaft with little circles at the end of oblique strokes indicated that the necessary combustibles were already to be found in the house itself. These signs were met with more frequently during the Thirty-Years War. A key with an arrow was the mark of the burglar. Crossed twigs, stones placed together and connected rods or briers showed the gipsy road. In India, the Bhamptas indicate the line of their march to their own men by means of a characteristic graph or by leaving leaf-plates as a sign of their presence. They appear to converse by making certain signs with their eyelids and fingers. An interesting means of communication is that of handsignals. Criminals have framed a complete alphabet of signs made by hands which are placed in different positions to indicate the letters of the alphabet.[2] In the West, it is more or less international. If the investigating officer knows that two prisoners use it, he need not be surprised at the wonderful similarity between their statements. Another mode is to write slowly in the air words that a

1. J. Adam's Criminal Investigation, p. 325.
2. Adam, p. 336.

quick observer can easily read. Marks of recognition are used by members of the criminal classes so that they may not act against each other but may co-operate in any attempt. They are numerous among Italians and the French. A signal, for example, consists in closing one eye and squinting with the other towards the nose. Some are very dangerous, because they help the criminal to seek new accomplices even in foreign places. An offender within two days of release planned a big house-breaking by gathering men with the use of such gestures. Calls and cries of warning should also be noted. Persons planning for a night attack in a forest or jungle or in a house do not call to each other by name or make any noise that will attract attention; but they imitate cries of animals and birds for the purpose.

Secret communications in prison are very wonderfully arranged; criminals know how to make the most of the slightest chance of intercourse when in prison. Words uttered as if by chance near the doors and windows or in the course of walking exercises by day or night are likely to convey important news from one to another. A prisoner pretended to be a fool and uttered nothing but numbers; while in the neighbouring gallery another man was apparently wicked enough to mock the fool. The uttering of numbers and mocking succeeded each other and really constituted a private conversation between the

two.[1] Sometimes the convicts talk to each other in melodies. Ave' Lallemant declares that in modern times the Morse telegraphic alphabet has come into common use in prisons, the dash and dots being represented by sharp and prolonged knocks, the marks being found in every popular treatise on Physics. In some cases, inmates of neighbouring cells lie down flat on the floor and speak slowly and distinctly to each other.

The study of the habits, customs, social organisation, ostensible trades and modus operandi of the criminal classes is of immense service for identification. In the southern part of Europe, the gypsies[2] are a characteristic criminal class. They have been for thousands of years using their forces to try and live at the expense of others. They are a cunning people committing murders during sleep and attacking their victims from behind or from a safe ambush. A gypsy, it is said, has never been known to commit a crime where there is a danger to be faced. This tribe is said to employ great skill in thieving and is noted for its powers of observation, but it is betrayed by its nasty odour. Every member of it makes an excellent spy.

Some of the tribes like the Sansis and the Bhamptas take a few women of their classes with them in criminal pursuits. Such women resist

1. J. Adam's Criminal Investigation, pp. 346,7.
2. J. Adam's Criminal Investigation, pp. 360,1.

officers of justice in pursuit of their husbands and relatives and keep them off by throwing dirt or excretaon them. Some of them are said wonderfully to conceal things of small size in their vagina. The Sonorias teach their children thieving very early in life and punish them if they forget their sleight of hand. Among them, one who has abandoned stealing is ineligible for marriage.

The moral status of several tribes is very low and despicable; for wives are said to be mortgaged among the Koravers. What is remarkable about the Chapperbunds is that their women are forbidden intercourse with men of other castes during their absence from home. The Kabulis entice or purchase handsome girls for marriage.

Some tribes boldly use the Post Office and the Telegraph for purposes of sending their spoils home; others send the same through their own agents. Several of these gangs befriend the village munsiff, the goldsmith and the liquor-vendor in rural parts with a view to facilitate their nefarious objects. Foreigners like the Kabulis enlist the aid of indigenous perverts.

Each tribe has a particular mode of doing things. For instance, the Donga Dasaries use hard grains or burnt matches on entering dark houses to note the position of any brass or copper pots or boxes therein. False names are used by the Koravers and the Alagiris.

Some are very religious; the Bhamptas worship the shrine of Goddess Kali at Akalkote Estate just before and after their adventures. The Koravers are devotees of Kali and Bëthala. The Sansis pour a little liquor as an oblation to Devi, as soon as they have made sure of their victim.

The communal organisation of the Bhamptas is remarkable. They enlist recruits from all classes except the lowest and initiate them into the mysteries of stealing. At a certain centre of theirs called Eüle in the Bombay Presidency, they have constructed strong buildings on an elevated place where the old women and boys keep a watch for government officials, especially the police. The houses have doorways connecting each other internally so as to facilitate escape when necessary. The leaders who have money organise expeditions by advancing loans to aggressives. If a member of the gang be in jail, his share of booty goes to his family. Sometimes, in the division of plunder, misunderstandings arise which may give a clue to the police. If there be a chance of many men being caught, one of them submits to arrest and imprisonment while others escape and are saved; he is rewarded with an extra share by the rest of the gang. Among the Kabulis, every member of the gang provides for his family and there is no common division of profits. Among a section of the Koravers, there is a panchayet which decides disputes relating to property and

marriage, and it is in charge of a fund for rescuing the tribe when in trouble. Every member of the same has authority to punish minor deviations from traditional customs. Several families of Thaku Wuddars in the Telugu country appear to be matrimonially connected. Their habitats are so situated that they can command a clear view of roads and paths for several miles around, without being easily accessible to others. In the Kondapalli Hills, a gang was not traced by the police officers even with the help of 250 men. Forest servants declined to give information in fear of being murdered by its members.

Sometimes, single individuals in these tribes become most formidable. Such were Sivasangu, Kathapommen in the Southern Tamil districts during the last century and one Jambulinga Nadan, till yesterday a scourge of the Tinnevelly District. In the Telugu country, one Mallibcyana of the Woddar class committed numerous dacoities in 1903. He was so well-known to other criminals that he was able to organise a fresh gang wherever he went. For his arrest, Government offered a reward of Rs. 1,000.

In various gang cases, a good many members of the criminal tribes have been penalised on a large scale, the present policy being commitment to settlements, chiefly manned by the Salvation Army. In 1885, a gang of 60 members of the Mullahs were brought to book for raiding

in Bengal. In 1900, members of a whole family of chain Mullahs were victimised with the exception of a boy. In a gang case at Ghazipur in 1910, 41 members of this tribe were tried and all but 4 of them were convicted. Sometime back, as many as 17 of the Bhamptas were transported in the Satara gang case of 1912.

What is more important at times is a knowledge of the superstitious beliefs and practices of the criminal classes which are likely to lead to crimes. The Koravers invoke muthêvi to keep them sleepless. Many like the Barwars care much for omens. 'Soporiferous' candles are made of the fat of virgin children and used to see whether any one is still awake in the house to be burgled. Women pregnant are ill-treated, because they are believed to be haunted by the devil. In India, persons have attempted to become younger with the help of alchemy. Almost every thief carries upon him a magic sentence or formula of immunity and leaves something on the scene of crime, believing, thereby his act will pass unperceived. In the North Germany, murderers believe that if they leave their excrement at the place where they have committed a crime they will never be discovered.[1] We have 'picture charms' and 'picture spells' which owe their origin to a belief in working evil from a distance. An image of wax of the person intended to be

1. J. Adam's Criminal Investigation, pp. 13, 2, 21

killed or injured is persecuted and demolished with incantation or chanting of certain mantrams. 'The murder mass is sung in Catholic countries on the birthday or nameday of the person who is intended to be killed.'

Even harmless superstition may subserve a purpose in investigation. When a looking-glass is broken or a portrait falls down, it is regarded as an evil omen. Among the Hindus, many an error is hoped to be avoided by reference to ragu-kalam, kuligaikalam and omens. Belief in fortune-telling has also to be noted in certain cases. A lady lost some jewels and when there was reason to suspect a domestic servant, the victim espoused his cause, because the fortune-teller, who was a relative of the servant, assured her that the jewel had been stolen by an outsider. The victim of a theft runs to a card-reader before reporting it to the authorities and comes back with very precise data about the author of the crime. Sometimes there is a reference by the aggrieved party to chiromancy. There is a widespread belief that by means of a drop of blood or peculiar black paste set upon a nail one may ascertain where to find a lost or stolen article, Many people believe that they possess means by which they can take a false oath with impunity. For example, if a person is resting his eyes on a holy bird he can be sworn in falsely without fear. In India, Lambadies and Singalese attach great importance to oaths.

The investigating officer must not be misled by the disguises and false names of the criminal. Hans Gross says, 'As a rule it may be laid down that a novice commits a crime and afterwards disguises himself while the expert criminal disguises himself before the commission of the offence. The former therefore tries to escape in disguise and the latter in his so-called natural appearance and consequently finds himself much more favourably situated.'[1] Even in voice the criminal may assume a very high tone or bass-note. An instance will show how hard it is to identify an expert criminal in disguise. A swindler managed to cash with a banker a number of false coupons cleverly forged. But the description given by the banker, though immediately furnished, was not true even in a single particular. 'The beard, the spectacles, the hair, the dress, the voice, the size and height of the man were different.' He was described as below middle height, although he was tolerably tall; perhaps he stood bending his knee beneath the banker's counter. In these days scars, wart, stains, etc., are removed without any difficulty. A cash-keeper had a large natural wart by the side of his eye. He shaved it clean off and placed spectacles on his nose. Then it was difficult to detect him. A faded scar is made visible by beating the spot where it existed with the palm of the hand until it becomes red; then

1. J. Adam's Criminal Investigation, p. 297.

the old scar will appear white in its original shape. Changes in complexion are easy; for instance, a dark rough colour is easily transformed into one of a delicate rose tint. Some criminals affect artificial paleness to put on a sickly appearance. The description of an offender to be detected must therefore be such that the particulars thereof are not modifiable. Stature must be well noted, and a missing limb or the colour of the eye and the form of the nose are hardly changeable.

In India, some of the tribes addicted to clandestine theft assume disguises to conceal their identity; while a few others dispense with such altogether. The Bhamptas talk and dress like the Mahratta pilgrims of Poona and Satara. The Koravers of the Tamil country appear in varied guises to delude the public. Sometimes they look like Komatis. Once, the head of a gang stalked about like a mirasdar or landholder, and others figured as a retinue of his servants. In 1905, one Chinnamadan, a Korava by caste, was arrested at Kumbakonam in the guise of a Vakil's clerk. A Capemarie Alagiri is often mistaken for a Brahman or a respectable trader. Donga Dasaries appear as Byraghies and some of them are adepts in reciting the Veda. Only a few tribes like the Joghies and the Maravers do not assume disguises for their ends.

Before the application of scientific data to the details of investigation, the use of blood-hounds to aid the police in the capture of evil-doers was well-developed. These animals evince a remarkable keenness of observation in discovering dead bodies and stolen property. Police dogs in France are trained to refuse food at the hands of strangers. They must be employed as immediately as possible after the discovery of the crime. If the scent becomes faint and feeble the hounds loose the trail and hence may not succeed. In Moscow, a blood-hound was systematically used by the police to find out purloined goods. A police dog 'Tref' succeeded in detecting a thief who stole bank notes and silver plate from the house of a Moscow gentleman. The dog was put on the scent. It followed the trail through several streets and came to a night shelter. Here it made for a coat that belonged to a house-painter and in the pocket were found the missing notes. It then left the shelter and following the trail to the shop of a dealer in old silver discovered there the stolen plate.[1] When attacking, these dogs suddenly catch hold of the right arm of its assailant so as to guard against a pistol bullet.

With the use of scientific appliances, investigation enters the scientific phase. Consultation of experts is highly valuable in several cases. It must be known to officers where specialists are

1. Mitchell, p. 31, 32.

available and how their advice should be obtained. For instance, the physicist may discover by a magnetic process traces of iron where chemical experts may not succeed in finding anything. Botanists furnished Dr. Hans Gross with certain proof that some branches of hops had been cut with a particular knife. The expert should as immediately as possible be acquainted with the circumstances attending the crime in respect of which he is consulted. If a wound is discovered, the investigator must obtain information as to the time necessary for healing it, the nature of the weapon, the position of the criminal and the mode in which the blow has been dealt. Several people may be proficient in diverse departments of knowledge and hence it is advisable to consult men of varied experience whenever it is necessary.

The scientific modus operandi of the criminal is so suitable to the commission of certain offences that it is hard to establish proofs of criminality. In arson, the criminal often takes pains to get up an alibi in advance. Sometimes a clock is used which raises a hammer at a desired moment; the hammer strikes some explosive substance, which in turn sets fire to some matches. In America, an ordinary electrical bell is used with which gunpowder or dynamite is ignited.

Besides the methods of crime commission, myriad instruments used therefor should also be

studied. Cheating is practised by intelligent swindlers palming off counterfeit articles. Fabrication may extend not only to things of daily use, like the weapons, the watch, postage stamps, childish toys, violin, etc., but also to things like Egyptian antiquities. A statue of Rameses, king of Egypt in a black basalt of Thebes, was sold for 100,000 francs, while it cost the seller only 1,100 to manufacture the same. Genuine parts are often combined with imitated ones by photographic engraving. In manuscripts, the reproduction of the old impressions offers little difficulty. The sale of horses is open to countless frauds as respects their age, defects, illnesses, temperament and even colour. The practice of cardsharpers should be clearly observed. 'Cheating goes on wherever games of chance are played.'

The devices of burglars are worth studying. Windows are raised slowly so as to provide a passage to the interior of houses. Safes are opened by removing the screws in a tactful fashion with a jack resembling a coffee-mill. An electric apparatus of safety bells has been devised by Germans and Americans. The bells are connected by wires which pass into the safe. As soon as the slightest movement is given to the safe, a flame is brought to bear on the electrical wires, which encircle it, and the bells begin to ring. In the American apparatus, 'there is in the safe a shell filled with mercury in which is dipped one wire

of an electric-magnetic ringing apparatus, while the other wire hangs just above the surface of the mercury. If the safe is touched or pushed, and the level of the mercury alters, the second wire comes into contact with it, and the sounding apparatus becomes active.' [1]

Burglars find good spies and scouts in pedlars, beggars, cripples, infirm persons and the like who go from door to door. They poison watch dogs or employ bitches to entice even castrated ones. One method is to get the people in a house away from home by sending them communications falsely purporting to issue from friends and relatives. This method also serves highway robbers to decoy their victims. Thus the ways of every class of offenders should be observed with minute care.

In crimes of violence, what kind of weapon was used in inflicting any bodily injury may be ascertained by a study of the nature of the wounds caused. Blunt instruments may inflict wounds with clean cut edges, especially where the skin is stretched tightly over it. Injuries caused by a cutting instrument are said to be wedge-shaped at the base, while the wound caused by a blunt one is crushed or bruised. If the direction of the instrument be perpendicular, the surface of separation of the wound appears cut, bruised or crushed; if the weapon has glanced

1. J. Adam's Criminal Investigation, p. 738.

on one side, it is rugged or torn. In the case of falls, serious internal injury may be caused without external marks of it. Where there is little harm within, the death of the victim may be due to a nervous shock suffered by him. If a wound be made with a knife or dagger, its channel is contracted as it goes deeper. If a firearm be used, the channel expands the further the shot penetrates.

Sometimes, injuries caused are too secret to betray the offender. Hans Gross cites the instance of a murderer at Cracow, who drove a needle into the heart of a woman. The wound remained unperceived owing to its being concealed under the developed breast. The offender hung up the body of the victim so as to simulate suicide. The resemblance of the characteristics of suicide to those of strangulation is a source of much error. In cases of alleged suicides, the clue to the truth of the matter is sometimes supplied by the answer to the question 'how did the victim hang himself?'[1]

Certain special usages may also be serviceable. Women in this country draw the cloth tightly between the legs and fasten it firmly at the waist, with a view to prevent indecent exposure of the person. External signs of drowning are said to be very deceptive. Suicide is committed by the use of poison, hanging

1. Adam, p. 643.

and drowning. Calcutta statistics for 1896-1900 showed that while poison was the means in the majority of cases, women committed suicide by hanging and men by drowning. The number of suicides among females was treble that among the males. The investigating officer should examine the effects of poisonous plants in this country.

The investigator should preserve even pieces of bone belonging to the victim. He must possess an ordinary knowledge of physiology and other sciences connected with the human body. All the objects on which there may be traces of blood must be preserved. The local police should be required to inform the people to leave as much as possible everything in the same state as it was at the moment of the discovery of crime. Mr. J. Adam refers to a case of murder in the Cuddapah District, where a woman was discovered brutally murdered in an open ground and three men were accused of the offence. The Sub-Magistrate discovered near the corpse some small beads belonging to a necklace owned by the woman and broken in the struggle. He discerned a tiny piece of raw flesh attached to a piece of nail which on examination was found human. It had been bitten off by the woman from the finger of her assailant. When the fingers of the three accused were examined their tips were not hurt. Further enquiries led to the fact that a man, with whom

the woman was alleged to have been intimate, had fled from the village. He 'was found to have lost the tip of one of his fingers'[1] and was therefore deemed to be the offender. Similarly, in a case of dacoity on the highway at Coimbatore in 1915, one of the bandymen victims bit a piece out of the cheek of one of the dacoits. In a recent case of housebreaking, a woman threw a knife at one of the criminals, which made a scar on his cheeks. The scar served to identify the offender.

Bloodstains are not only dark brown but are, according to age, temperature and the substance on which they have fallen, reddish brown, greenish brown, light olive green, light rose and sometimes colourless. They fade rapidly into grey. If they be very minute, the investigator will do well to make use of a good magnifying glass with which unsuspected spots may disclose clear traces of blood. Dragoondorf suggests a method of testing a suspected stain. It should be cut out and laid in a small clean vessel such as the chemist's measuring glass. It should then be moistened with distilled water and kept for a time; subsequently a piece of colourless filter paper should be pressed on to the stuff with a glass rod. About thirty minutes after, the paper and the clean glass rod should be taken away and some oil or spirit of turpentine, be added with an equal quantity of freshly prepared tincture

1. J. Adam's Criminal Investigation, p. 555.

of guaiac. If no blue colour appears, it is not blood. The face, hair, clothes, foot-wear, etc., of the criminal should be examined for blood-stains. Finger prints in blood should be detected and preserved.

It is almost inevitable that the violent offender gets blood on the hand with which he has seized his victim. It frequently happens that immediately after committing the offence, the criminal in his search for valuables groping in the dark, opening and shutting the doors and windows, and seizing vessels to wash himself, leaves behind on all these articles the impression of his hands and his several fingers. Blood lends itself admirably to the production of neat and distinct marks. These finger impressions must always be sought after and registered. Similarly, the traces on the body of the victim should also be examined and preserved ; and those on tools like kodalies, mamatties and household utensils must be searched for. The next thing to be done is to ascertain whether the impressions taken do not perhaps proceed from the victim himself.

Blood is a colourless liquid with red and white corpuscles. The former differ in size and shape according to the species of animals. In a fixed quantity of blood of various animals, the number of red corpuscles varies. If there be 53 in horse blood, there are 48 corpuscles in human

blood of the same quantity.[1] The blood of different animals varies in the intensity of its action upon hydrogen per oxide, human blood liberating twice as much oxygen as that of the horse or pig.[2] Whether a stain is of blood or of other matter must first be ascertained, since acid salts of fruits produce upon iron an appearance similar to that of a stain.

The difference between human blood and the blood of animals and birds must be carefully discerned. In 1857, when scientific evidence was given as to the difference between these in a criminal trial at the Taunton Assizes, the judge was doubtful as to the powers of the chemical witness to distinguish between different kinds of blood. In that case,[3] a man named Nation was charged with murder; he had a knife on which were stains that appeared to be blood, but the prisoner contended that he was not guilty and that he had recently been cutting raw beef with it. The chemical evidence proved that the blade had been plunged into living blood and that it could not have been that of an ox, pig or sheep. Now the test[4] is carried on by placing a small quantity of human serum in a series of tubes and into each of these is poured one drop of the fresh blood of different animals diluted with salt solution. The tubes are allowed to stand for

1. Mitchell, p. 155.
2. Mitchell, p. 158.
3. Mitchell, p. 161.
4. Mitchell, p. 165.

thirty or forty-five minutes. If in the case of any tube, the upper liquid clears, the blood is of human origin, that of other species of animals dissolving in it, colouring it red. An interesting exception to the rule is that the serum from the blood of anthropoid apes gives a pronounced reaction with that made specific for human blood and *vice versa*.

Just as in the case of blood, there are differences in hair and there are tests to distinguish human hair from that of other animals. The former is capable of absorbing gases, odours, etc., and retaining them, and may therefore be tested to ascertain whether a man was at a place impregnated with a particular gas or odour. Hence the importance of preserving it in a box of white metal with the lid being soldered.

"Human hair is characterised by being fairly uni orm in diameter throughout most of its length and then tapering gradually to a fine point." In many animals, the medulla or central canal is plainly visible under the microscope unlike in men. 'Adult human hair should be distinguished from that of an infant, which has few scales upon its surface. In certain respects there are some particulars in which the latter resembles that of a lower animal.' Hair should also be distinguished from cotton and wool fibres. On this subject Dr. Emile Pfaff's book called 'The hair of man, its physiological, pathological and

legal importance,' gives valuable and exhaustive information.

The following instance will throw light on the detective possibilities of hair. A man was grossly wounded by an unknown person, inside a cap of whom two hairs were found, which were subjected to microscopic examination. The result was the description of the person as follows: 'A man of middle age, of robust constitution, black hair, intermingled with grey, recently cut, commencing to grow bald.'

By scientific examination of the air in the room in which the criminal operated, it is definitely ascertained whether he breathed in that room at a particular time. As soon as a crime is committed, the scientists in a well-equipped manner are informed of it. They at once get into a big automobile filled with scientific appliances and reach the scene of the offence. All parts of the room and all things therein are examined; a section of the air is also taken for analysis. Finally they are able to give instructions as to who should be arrested and what should be looked for in order that definite comparisons may be made.

The age of inks is determined by scientific tests. 'If writing in blue black done within two years be treated with acetic acid there is an *immediate* diffusion of the blue pigment, while in an old writing it occurs slowly and to a

limited extent.' Also, the diffusion affects the whole of the pigment in recent writing, while in the other, it affects only the surface of the letters. As time passes on, blue pigments gradually fade out leaving the black on paper. Deficiency of tannin causes the writing to turn brown. The composition of blue black ink differs from that of carbon inks used in printing. 'Indian ink consists of a mixture of glue with lamp-black in the finest possible state of division.'

Writings in sympathetic inks, which are invisible till they are treated with a special re-agent, are put to many ingenious uses by the criminal. Sometimes by applying steam to open a letter, the tannin and the iron sulphate, which are constituents of a form of sympathetic ink, come into contact and form a compound which leaves a stain upon the paper. An ordinary form of sympathetic ink is prepared by mixing up one part of linseed oil, eight parts of liquid ammonia, and a hundred parts of water. This is called 'Weidmann's ink.'[1] It is taken and the paper moistened just before writing. Letters from prison are almost always written either with urine or milk. A woman is said to have moistened a small printed piece of wood with milk from her own bosom.

Poison tests are elaborately dealt with in books like Lyon's Medical Jurisprudence.

1. Adam, p. 339.

Mineral poisons containing phosphorus, mercury and strychnine, may be easily tested. Scientific tests are necessary to expose pretended illness; blindness is shammed by instilling a drug named eserine into each eye, which reduces the size of pupils. In such a case, on looking into the eye with the ophthalmoscope certain characteristic appearances would be found wanting. If deafness is pretended, something should be dropped by the side of the culprit; then the man really hard of hearing, perceives the disturbance owing to the conductivity of the ground, the chair and his body. He feels the noise, but the pretender thinks he ought not to hear the noise; hence while the former turns aside ever so slightly, the latter remains motionless.

As regards epilepsy, the genuine epileptic does not select the spot of his fall. It is impossible to mistake the cry of the epileptic which is unique in character and which is rather hoarse than shrill. In this disease one symptom impossible to imitate is the muscular contraction. Only an expert gymnast can produce this on the upper part of the arm, but no one can provoke it at will over the whole body. Catalepsy in its extreme form is not easily distinguishable from death.

In genuine paralysis, there are present various signs which affect different parts of the body all in harmony with one another. If the

right side is affected, the tip of the tongue should distinctly diverge to the left. In one case, when the sole of the foot of a prisoner shamming paralysis was tickled, he drew up the leg and betrayed himself. This was a fatal error. In cases of pretended insanity, the expression of the eyes may be noted. If one intelligent look escapes him, the shammer will be out; when not observed, the pretender casts about a swift and scrutinising glance; this must be keenly noted.

The investigating officer must make a scientific study of hand-writing by the use of the microscope. Dr. Scholz said 'we write not only with the hand but also with the brain.' The writing of an educated gentleman looks different from that of an educated lady. The child does not write like the old man. 'When a professor writes like a copyist and the merchant like an artist, they have missed their vocations.' The writing of one man may differ in different moods of his mind. The secondary influences on hand-writing should also be noted. Imitation in this matter of a revered person like the father or teacher is natural to the child. Pursuit of some strange hand may alter the normal writing of a person. Heredity plays a part in hand-writing as in characteristic gait. Artistic variations are studied in character. The influence of subconscious memory of others' writings should be distinguished from the effect of conscious

imitation. The effect of emotion on handwriting is important in criminal investigation. Hypnotic suggestion also may alter it. Hand-writing experts may be found among teachers who have to exercise constant observation of the records of various pupils and offer criticisms and suggestions to the learner. An engraver or lithographer may also be consulted. Constant professional observation in any line of financial or commercial business tends to confer skill. The investigating officer has ample material in the signatures and notes of his colleagues and clerks, in those of witnesses and accused persons and also in a number of other criminal record files. The best work on the subject is Ames on 'Forgery, its detection and illustration.'

The interpretation of cipher writing is a difficult task. Ciphers are certain conventional signs which have no importance and signify nothing in certain cases. The sole object of it may be to lead the decipherer astray. Sometimes the signs may mean the contrary of their natural sense. Ciphers may be numerical or alphabetical; then the key-number or the key-word should be known. The simplest is what is styled Julius Cæsar's cipher. Sometimes an alphabet is devised and agreed upon between two correspondents some of the letters of the language being excluded. What is called the stencil or black line cipher is written and read by placing a stencil over the

paper, the lines being visible through it. The paper is transparent and the writing is not exactly straight. The investigating officer will be unable to read the cipher, unless he lays his hand on the stencil or ruled paper. It is often no good attempting the task of elucidating different cryptograms, unless chance or skill has placed one in possession of the key. Some of them appear to be complicated at the outset, but are really simple. The addressee may be enquired after and their meanings studied from him. Cool reflection and great power of combination are essential for attempts at interpretation. Angle-writing is used even by school children, in which letters are grouped two by two, one being dotted and the other not. The puncture system employs numerals for letters.

The police must be acquainted with the criminal propensities of individuals whom they arrest or suspect. The bulk of serious crime is committed by those who have previously been in their hands; hence the importance of the methods of identification. In ancient times, the recidivist was branded for this purpose. Recently, photography was first adopted on the principle that certain dimensions of the face of an adult human being do not change if there has been no illness or injuries to the skull. But it was not a reliable method owing to its variation under different conditions of man and his surroundings. It

was superseded by anthropometrical measurements of Bertillon in France in the eighties of the last century. These are based on the fact that the dimensions of certain bony portions of the human frame do not vary from youth to extreme old age. The system was first applied in Paris in 1882; and helped to detect forty-nine criminals giving false names during the first year of its employment. It was introduced into India in the year 1892, even earlier than in England. The measurements are twelve in number and are taken with standard instruments by a special staff and are recorded upon a card attached to the photograph of the prisoner. Along with cranial measurements, it includes that of height, length and width of hand and feet. Special marks like scars, moles and tatoos are also noted. Anfossi devised an improved system of identification based on cranial profile and on the opening between the fore-finger and the middle finger.

With his craniometer the cranial capacity is ascertained and five dimensions are measured; *viz.*, (1) the distance between the root of the nose and the vault of the skull at the occiput directly over the head, (2) the distance cross-wise between the same, (3) the linear space between the most prominent parts of the skull on each side of the head, (4) the distance between the points just above the ear on both sides of the head, (5) the maximum circumference which is obtained

by measuring round the head the line that connects the forehead immediately above the eye-brow and the occipital protuberance at the back of the head and the points where the external ear joins the head on either side of it. The cranial capacity is obtained by adding the five measurements. This scientist has also invented the tachy-anthropometer which permits the quick measurement of the lateral transverse and horizontal curves of the skull to be taken and regarded automatically by an electric pen. 'It consists of a vertical column, an adjustable horizontal bar and a graduated scale for rapid measurements and a couple of scales at the base for measuring the feet.'

The Bertillon system was found defective in several cases. One of its drawbacks is that the measurements could not be very accurate in the light of the fact that some degree of natural variation takes place in the course of years. Some of its developments are noteworthy. The 'word portrait' or speaking likeness consists of formulæ helping to identify known criminals by conventional abbreviations of the peculiar traits of the face. The portrait is taught to the police in France. It gives in exact and scientific terms the various characteristics of the forehead, the nose, the ear, the mouth, the chin, etc. The walls of the lecture room of Bertillon were covered with numberless life-size photographs of heads, so that

when the description was finished his pupil could look round and point out heads containing the features described. Similarly, lessons were taught on colours, *i.e.*, the colour of the iris, hair, beard and complexion. Reiss devised a telegraphic code of the 'word portrait' by substituting the decimal numerical system for its vocabulary. In his system, the forehead is equal to 0.1, the nose 0.2, the ear 0.3 and so forth up to 10. Thus the ten characteristics thereof are simplified. By combining the anthropometric card with the 'word portrait', Bertillon invented the so-called album D. K. V. which gives the main traits of the criminal. D. stands for the lobule of the ear with sweeping outlines. K. for the concave in profile and V. for the lower concave fold. This serves in itself for the recognition of the suspect. The spoken portrait, especially with reference to the right ear and the nose, is good for identification in the field. Detection of the colour of the iris requires some practice.

Ottolenghi has devised a biographical ledger which gives an account of the organic and physical marks of the offenders. The details of this ledger are illustrated in DeQuiros's 'Modern theories of criminalty'. The Bertillon system was finally simplified and perfected by Icard in 1909.

This gave way to the system of finger-print. Ancient Egyptians required criminals to seal their confession with finger nails. In recent

times, the first attempt to take the finger print was made by Sir William Herschel in 1858 in Bengal, owing to the difficulties of checking forgery by the natives of India. The systematic use of finger prints was adopted in 1877. This system is based upon the principle that the arrangement of the loop ridges of the fingers is not altered from the seventh month in the womb to death—no two persons having identical forms. Calculating the chances that the print of a single finger should agree in all particulars with the print of another finger, Galton concluded that they would be 1 to 64 millions. As regards patterns peculiar to the race, this author expresses the opinion that there is no pattern peculiar to any race although the width of the ridges appeared to be more uniform and their directions more parallel among the negroes than among other races. He also testifies that according to his calculation loops are found in 67.5%, whorls in 26% and arches in 6.5% of men.

The dominance of heredity in patterns of the finger prints of a brother and sister or of twins is very striking. Resemblances are in respect of loops and whorls in both. The influence of the mother upon the type of finger is more pronounced than that of the father. 'The finger print impressions fall into four types, arches, loops, whorls and composites. In the simple classification, the arches are put together with loops, and composites with

whorls. Of the two, the whorl admits of a numerical value.' 'The system is of little service in the discovery of an unknown criminal.'

It is curious and interesting to read of the nose print system invented by an American farmer who claims that the lines on a cow's nose are as permanent as those on the human finger. He has devised a card catalogue to take the nose prints of his stock and it is very useful to detect thefts of cattle.

Differences in colour are measured with Lovibond's tintometer which helps us more accurately to distinguish variations in the hue of inks than is possible with the naked eye. This consists of strips of glass so graduated as to form a series of colour scales and was first used in the Brinkley poisoning case, where the tints of different inks on certain documents alleged to be forged were examined with its help.

Recent advance in the method of the electric telegraph enables us to despatch to distant places facsimiles of photographs or specimens of handwriting or of any sketch. The telephotograph of Mr. Thorne Baker reflects photographs for a long distance. The photograph is printed upon a flexible plate with a backing of lead foil which is attached to the transmitting cylinder. The thousands of minute points which go to make up the image of the person are reproduced upon a

receiving cylinder at the other end of a telephone wire. Mr. Mitchell, the author of 'Science and the Criminal,' says 'that the instrument may also be used with wireless installations for the transmission of simple pictures or diagrams and by its means it would be easy for a ship at sea to send or receive portraits of suspected individuals.' 'The selenium machines of Professor Korn were used for transmitting the portraits of the chief actors in the Steinthal case and one of these photographs was received in London while the Court was still sitting in Paris.'

The signal box of the policemen at Chicago, which enables him to call in the aid of his fellows without leaving his beat, is also an achievement of science. Other instruments necessary for a police officer find a detailed mention in Dr. Hans Gross' huge work on Criminal Investigation. Of a number of articles which are recommended for the equipment of an investigating officer, the pedometer is interesting, being an instrument of the shape and size of a watch to measure distances. It is put in one's boot. It can also be put into the pocket with needles on the dial set at zero.

The maintenance of criminal record files and registers as in Germany will best facilitate the detection of recidivists who are responsible for the bulk of crime in any country. These files contain not only minute details of each offence of

which an accused has been convicted, but a register of his friends, companions, accomplices, family, relations and employers, all classified in such a fashion that the information is available at a moment's notice. The names of criminals in one register are arranged phonetically and cross-indexed to others. Throughout Germany records are maintained in every city, town and village where a citizen is born. Every criminal court forwards to his place of birth the record of any sentence imposed on a prisoner, and it forms part of the general file kept there for reference by the police. The invention of an alias may give some trouble in utilising the system. Nevertheless, various kinds of registers have been devised in order to obviate such shortcomings. Photographs which may be of use for field detection, are clsssified according to height, age, shape of nose, etc., of the subjects and the likeness of criminals are arranged in a gallery of rogues. There are maintained tattoo and deformity registers, records containing handwritings of criminals, files of newspaper clippings, lists of dates of prisoners' entry and release, registers of nicknames and aliases and similar other documents.

Further, the registration system which prevails in Germany is of great service for detective purposes. Each community large or small keeps track of the movements of its residents. The

laws of registration require all persons in a community to report their arrival, departure, and change of dwelling within police boundaries along with their names, business, date of birth, place of birth, religion, status, etc. A citizen who reaches a city must within 24 hours file his announcement of appearance. If a foreigner stops at a hotel, the hotel proprietor must notify the police of his appearance. In many places, the new arrival must present a certificate of character from the police of the locality which he left last. Even within the city, a citizen must inform the police of his change of address, the arrival of a visitor, and employment of a new servant, and false announcement is an offence under the Criminal Code. The policemen on their beats are continually checking up new arrivals. So far as names and addresses are concerned the information at police headquarters is at the disposal of every citizen. The police certificate is obtained with reference to the character of any person to be employed. In France, the criminal record of convicts maintained at every village is called casiere judiciara. Employers refer to it to ascertain the delinquency of applicants for service. The police department informs the tax board of new arrivals subject to taxation.

The personal qualifications of the investigating officer are elaborately dealt with in Dr. Hans Gross's works. He must have an

encyclopædic culture, and have an open mind to learn something even from a confirmed fool. He must set his mind on success and move about without being disheartened. He must know the exact moment when he can form an opinion. He must know from whom he could best obtain information. The parish priest in European countries is one such person. Drivers of public conveyances, common coolies and prostitutes may be consulted for a lot of information about the movements of any busy person. Although parallel situations may be imagined, preconceived theories must be avoided. For the sake of information, the investigating officer must always be on good terms with officials in all other departments. He must shew serviceableness to everybody who can be useful to him. He must read all the records relating to the accused and must pay attention to precise details, especially in respect of the inspection of localities. He must be acquainted with the special talents, singularities, and weaknesses of the most important experts. Mr. J. Adam says, 'The idiosyncracies of the Indian juryman have perhaps but little interest for the investigating officer, because he has nothing to do directly with the presentation of any case before a higher tribunal. Before a case leaves his hands he should eliminate every possible cause of error.' He should endeavour to present the case to himself as it would appear to a person absolutely

devoid of the experience he himself possesses. An extensive acquaintance with almost all the branches of law would be of great service for the efficient performance of his work and he must possess the vigour of youth, robust health, tact, courage, loveliness, and vigilance.

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ADJUDICATION.

Now we shall turn to consider the duty of the Judge at Court. Dr. Hans Gross in his Criminal Psychology gives in detail all the states of mind that might possibly be involved in the adjudication of a criminal case. He mentions two methods involved in every inquiry, *viz*., standardization and variation. The complex of conditions demonstrated to be necessary for the objective correctness of some particular point must be kept constant; this is called standardization. Variation of the conditions consists in the abstraction, from the evidence, of those details which might possibly be incorrect. The importance of the problem lies in the patent fact that inferences and theories are often constructed which are formally free of error, but psychologically full of mistakes that no logic whatever could correct. The danger of analogy lies in the fact that we prefer to depend on something already known, and there is often an attempt to assimilate the conditions for filing complaint to those necessary for proof; probability may be

sufficient for the former but certainty is needed for the latter.

What is essential for every one concerned in the administration of criminal law, is a knowledge of what evidence is, and what it is not. The police should exercise their powers of arrest, only if evidence available has a chance of not being contradicted at the trial. The innocent have suffered and the guilty have escaped for want of scientific methods of gathering evidence. In the primitive stage, personal impressions were taken as evidence of guilt. In the next stage which is religious, ordeals came in. With the advent of law, evidence was originally quantitative, and torture was employed to extort confession. Ferri speaks of the sentimental stage of proof in which the guilt was determined by the conscience of the judge or the juror. Lastly, it is the scientific stage that is advocated as affording the best means of collecting evidence. The rules in respect of it should be flexible and expansive so as to cover the approaches to truth in every case. No burden of proof is needed, if otherwise the liberty of the innocent is guaranteed. The success of the preliminary examination must depend largely upon the character of the examining magistrate and the powers given to him. He should be able to gather all the available evidence, by going to the scene of crime and adopting scientific methods and must keep a full record of the examination,

although, after committal, it is the business of the prosecution and the defence.

Another point to be noted is that expert evidence may be contradictory. Some of the doctors are not specialists. Some make mistakes because of the imperfect development of medical science in certain directions. Special course in legal medicine should be instituted as at Lyons and Paris and medico-legal data should be accumulated. Besides, they should be chosen in such a manner as to make them non-partisan, just like the jurors. In Germany, there is a college of experts in each province to which appeal could be made from the decision of a court of first instance. At Berlin, there is a final Court of appeal, which possesses the ablest of them as its members.

Under the new system, evidence is required not only of the commission of a crime and its material imputability to a person, but also about the environment and character of the accused. A number of scientific devices like hypnotism may also be tried to detect a guilty person. As regards oath-taking, Beccaria says: 'The laws are again in contradiction with Nature when they demand of the accused to tell the truth, since none would contribute to one's own destruction by having had to take an oath.' An oath is good only for people who are pious and at the same time morally weak. The oath simply increases the attentiveness of the witness.

Mr. Arnold, the author of 'Psychology applied to Legal evidence,' exposes the errors of interpretation of the principles of Criminal Law and of the Law of Evidence in India. His attack on the 'knowledge equals intention theory' is remarkably instructive. It is allied to the doctrine that 'every person must be taken to know the natural and probable consequences of his acts.' Such knowledge is determined with reference to a person of average prudence being in the same position with the person whose conduct is impeached. What such a man may be expected to foresee is regarded as likely. Arnold raises the objection that knowledge is here confused with belief, since the former can be predicated only of facts present in consciousness, and not of the probable effects of an act which are the subject of conjecture, opinion and similar states of mind. He says that the error of supposing that a man knows the probable result is doubtless due to the common fallacy of reading into the agent's mind what we feel ourselves after the event. As between knowledge and intention, the latter implies a desire or impulse which prompts one to action, whereas the former can only indirectly influence conduct. In moments of blind rage, the mind is practically blank or without any but the most general idea of the future consequences of an act.

According to Psychology, an impulsive act should be distinguished from an intentional

one. No doubt both are volitional, but in the former the idea to be realised is unspecified and general; whereas in the latter there is the ideal prevision of the end to be attained; while an impulse implies a simple volition, intention is preceded often by a complex volitional process. Owing to a distaste for a psychological view of the matter, law ignores this distinction in fixing liability where these mental elements are concerned. The difficulty of ascertaining the truth in such cases is not a satisfactory reason for inventing an artificial system which does not apply to existing facts but gives rise to incorrect presumptions and thereby works injustice to the accused.

In the matter of enquiry, a critical use of the senses and clearness of thought, freed from preconceived influences, memory illusions and wrong association of ideas, are necessary both for the judge and for the witness. The judge should see that the witness is able to speak the truth. Nervousness in court must not be mistaken for prevarication in deciding the integrity of witnesses. The training of the deponent into a capacity for truth-telling is dependant in part on (1) the judge's knowledge of all conditions that affect observation and reproduction, (2) on his making clear to himself whether and which conditions are operative in the case in question and (3) his aiming at the elimination of negative

influences from the witness. The judge must have patience, since it is the most important requisite of success. 'Men must be drawn out and not probed.' The judge should determine the witness's level and then meet him on it; his funded thoughts must be fitly estimated at the outset. The witness's mode of viewing all the circumstances of the case should be perceived in order to avoid misunderstanding. To presuppose as little as possible should be the chief motto of the judge. It is characteristic of our time that each man is highly interested in some matters concerning himself and his immediate environment. Hence, the witness in every case must be aroused to take a personal interest in connexion with the matter which requires to be proved. Hans Gross says: 'Egoism, laziness and conceit are the only human motives on which one may unconditionally depend.' As regards experts, the judge must evince an interest in the case and earnestly try to understand and co-operate with them. The outward expression of mental states becomes habitual and should therefore be observed whenever it is necessary.

Gestures are the natural expressions of one's feelings and should therefore be clearly studied; when a witness deposed to the fact that a certain lady went down, his hands pointed upwards at the same time, betraying thereby that the words were false. Certain signs have to be interpreted

to mean the contrary of what they seem to indicate. They should be understood by reference to their true significance. The direct activity of the nervous system is seen in paling, blushing, perspiring, palpitation and such like irrepressible symptoms.

The manner and degree in which a promise is kept may be observed to test his honesty. Even in matters of expression, character is discernible. Every individual quality is nearly a symptom of a whole nature; and hence all those indications that show us the man as a whole are for us the most important. The acquired traits of persons belonging to various ranks of society or suffering from diverse defects should be cautiously studied. For instance, the devotee always makes an impression rather specifically feminine, while impotence exhibits disagreeable characteristics. The mistrust of the deaf man and the peculiar smile of the hump-back are well-known. The physical expression of emotions must be keenly noticed. 'The checking down of suppressed vexation, the stifling of helpless rage, the leering glance and jumping heart of envy would give us volumes of information.' The fearful self-punishment of the accused often results in fainting. Laughter often fails to conceal other mental conditions than those it essentially stands for, like anger, rage, pain etc. Usage gives different points of view to different persons. The

peculiarity of the psychological traits of women and children should be borne in mind as differentiating conditions of giving testimony; the influence of habit, heredity, sleep and intoxication, must also be studied in estimating evidence at its true worth.

Apart from the willingness to speak the truth, the capacity of a witness to depose should be ascertained by examining his qualifications. A psychological as well as a medico-legal expert should be attached to every court. Memory is not so reliable as it is imagined to be; a man might have travelled in a carriage for miles while his mind was pre-occupied with ideas other than those relating to the vehicle; then he would not be able to inform us accurately of the colour of the horse which drew it. 'The reliability of the testimony is sometimes in inverse ratio to the certainty of the witness because the witness who doubts his own memory is most careful in his affirmation.' Spontaneous deposition is often more accurate than the suggested one. While suggestion should be sparingly used in the case of men with strong imagination, it may be necessary in the case of laconic witnesses. A phonograph is proposed for use in courts in order to preserve the subjective elements of tone, expression, etc. of the deponents. The importance of the psychology of testimony is clear from Hugo Münsterburg's noteworthy remark

as follows: 'The court will have to learn sooner or later that the individual differences of men can be tried to-day by the methods of experimental psychology far beyond anything which common sense and social experience suggest. But no one asks for the striking differences as to those mental details which psychological experiments on memory and attention, on feeling and imagination, on perception and discrimination, on suggestion and judgment, on emotion and volition have brought out in the last decade.'

As regards the study of the accused, his behaviour must be watched at every step. Even a single item may betray one's whole character and people show their weaknesses before those whom they hold of no account. The main features of the prisoner's earlier life should be enquired into and considered in relation to his conduct in the particular instance. To be brief, each individual criminal is a new study by himself.

Hans Gross says that the physiognomy of the hand which is said to be man's second face serves best to reveal one's character.[1] Esser calls a work hand the elementary, a masculine hand the motor, and the hand of a sanguine character sensitive. The psychic hand is said to characterise beautiful souls and noble spirits. Herbert Spencer says that those whose ancestors have

1. Hans Gross' Criminal Psychology, p. 102.

worked with their hands possess heavy ones, for muscles grow stronger with practice and the skin becomes coarser through friction. The physical properties of the hand are said to be due to hereditary influences. Persons believing in the significance of the cast of the hand must be warned against exaggeration and haste in drawing their inferences.

Partial confessions should not be wholly relied upon. Confessions may proceed from despair of defence or vanity or intent to throw much of the guilt on another person, or it may be the result of enticement or coercion of the innocent to confess in hopes of mitigation. Hence the circumstances in which confessions are made should be scrutinised in every case. 'In cases of dangerous accidents, responsibility should be fixed on proper shoulders. Their causes should be investigated by committees of enquiry, since in such instances the system rather than a single individual is the occasion of the danger. The blame mostly lies on insufficient staff, lack of training, and want of supervision, etc. Then the organisation must be overhauled.

Criminal Science requires that the judges should be fitted for their duty by special scientific training not only in the fundamental principles of criminal law and procedure, but also in criminal anthropology, sociology, and the psychology of testimony. The specialist judges will be able to

gather an almost inexhaustible store of data on which may be developed the scientific jurisprudence of the future.

Now we shall see how far a jury is useful at the present day. The jury system is as old as civilisation. In ancient Athens, this function was performed by the Heliastes; the Roman Jury had jurisdiction in civil cases only; among German tribes the citizens had the power of judging. The feudal jury was composed of the peers of the accused. It was the system introduced at the time of the Norman conquest that influenced the subsequent development of the jury in England.

The system was originally intended as a bulwark of popular liberty against encroachments by the central power. In order to understand its defect, its composition and capacity should be examined. The jury is not representative of men in varied walks of life, manual labourers and professional men being generally excluded. The majority happen to be of the class of merchants or petty traders, where trade is prevalent, and of farmers where agriculture is the chief occupation. Many are unwilling to sacrifice their time, and are also hampered by ignorance and inexperience. They lack the capacity to distinguish principal and relevant details from insignificant and irrelevant ones. Where even the judges and lawyers have very little knowledge of criminal anthropology and criminal sociology, it need not

be doubted that jurors would have far less. Ignorance engenders a suspicious attitude towards all concerned in the trial, and opens the way for the predilective influence of the lawyer. A clever advocate can deceive a jury as to the true significance of evidence. As Parmelee says 'everywhere an oratorical character is given to the debate and a great deal of sentimental claptrap is introduced on account of the predominance of sentiment over reason in the jury.' The influence of the judge is great in England, whereas in France, the summing up of the judge has been abolished, because of his partiality to the prosecution, although he may be consulted by the jury. Sometimes the attitude of the jury towards the judge influences the decision of a case irrespective of its merits. If the jury loses confidence in the judge on account of some mistake made by him, or if it is displeased with his personality, it will oppose him as much as possible in order to spite him. Further, the jurors may be greatly influenced by the appearance and personality of the defendant and the plaintiff. The press and the public feeling of the occasion may have much influence over them and, owing to local or communal prejudices, they are likely to be more than usually severe upon one kind of crime than upon another. If a case of misappropriation came up before a jury made up largely of merchants their verdict would be much harder on the accused, than in a case of murder.

Furthermore, the jury seriously lack the habit of continued attention. Not being used to follow the workings of a court, many jurors after the first few minutes fall into a semi-conscious dreamlike state in which they hear very little of argument or evidence. While it is the function of the jury only to be judges of fact, they base their judgment often on the penal consequences of conviction to which lawyers draw their attention. Where unanimity of opinion is required, a single person dominates all others and his persuasion prevails, not because he is the most intelligent but because he has the most stubborn will. Even if the intellectual level of the jury be raised, it may not very much influence the average intelligence of the group.

The jurors may be required to give reason for their judgment, but this is regarded as derogatory to their independence. The jury must at least have a list of questions to be decided and prepared by the judge as in Germany. If the arrangement be that the jury presided over by the judge should decide the penalty, after deciding the question of the guilt, many of the guilty persons would not be acquitted. The system of assessors may be useful, because they decide both law and fact in co-operation with the judge. Where technical knowledge is required, the jury should consist of experts. When the accused is a woman, it may sometimes be good to have a jury of women. In

America, in States where woman suffrage is permitted, a lady who is a party to a suit has the right to demand a jury of women. It is also suggested that where special knowledge is required, there may be a Board of Judges who may each be a specialist in one branch of legal or scientific knowledge and contribute to the wisest decision in any complicated case.

The system is not suited to the constitution and character of many races. In certain periods of English history, the jury was thoroughly cowed down by those in power and coerced into giving a verdict in their favour, but under a democratic power, it was generally level-headed. Modern scientific opinion is in favour of retaining it only for political offences. Lombroso is of opinion that a definite number of educated men should be elected by the people, and from their list should be chosen members of the jury for such cases. In other matters a good and trained judge is as much the peer of the accused as any one else.

Now we may turn our attention to the system of criminal procedure that will help us best to find out the truth in any case. In the modern system is found a fusion of two kinds of procedure, the one predominant in continental countries, and the other in States where the English method has been adopted. The first is derived from the law of private revenge, and the other, from the principle

of State investigation. The former is 'public, oral and contradictory,' but the latter 'secret, written and uncontradictory.' This throws great power into the hands of the Government. Originally there was no prosecution; only a searching enquiry was made by the judge who was himself the prosecutor. But now the prosecution is conducted by a body of public officials. The secrecy and lack of contradiction formerly limited the power of the prisoner to defend himself. At the present day on the Continent, both at the preliminary enquiry and at the trial the counsel for the defendant may be present, but there is no contradiction by cross-examination, the questioning of witnesses being done by the judge himself. At the preliminary examination, the enquiry is made in France by a judged' instruction corresponding to a committing magistrate.

The evil of the English procedure of accusation is that the accused is at liberty to keep silent and hide the evidence available, and that the trial takes the form of a duel rather than a debate enabling the judge to look fairly at both sides of the question. But want of publicity does away with the check of immediate public resentment to the grave partiality, if any, of the judge. While the continental method is good for enquiry, the procedure of accusation supplies us the efficient mode of conducting the trial. Even then, unless the accused is defended by a competent person

who can make a clear representation of the best points in his favour, the trial may not be conducted in a manner just and fair to him. Since the State has a twofold duty of protecting the individual accused as well as of defending the society, it is suggested that there should be public defenders of the accused appointed by it just like the public prosecutors so organised. No doubt at present the rule is observed of deputing a lawyer to defend the accused in cases where he is too poor to engage one but the defence in such circumstances is comparatively far weaker than the prosecution. In France, the counsel for the accused is chosen by the President of the Bar Association and the public opinion of the bar induces him to do his best in favour of the accused.

As public prosecution introduces the underlying principle of the procedure of investigation and throws the balance in favour of society as against the individual, a system of public defence should be established in the interests of the latter. In Pidemont in Italy, the advocate of the poor is an officer appointed by the Government. Every public defender should acquire a special scientific training like the judge, and must be allowed to guide and co-operate with private counsel for the accused. The method of allowing the accused to plead guilty may be avoided, especially for the reason that many an accused through ignorance

of court procedure or of English are incapable of understanding the question whether they are guilty. Delay in proceedings will be avoided, because as soon as the defender obtains evidence of the innocence of the accused he will demand a trial immediately. While prosecution and defence are necessary for arriving at a truth, they are both equally important functions of the State. So, the public defender should be given as much authority over the police as the public prosecutor. Then the police themselves would be induced to adopt a careful and impartial attitude towards the accused.

EXAMINATION OF THE CRIMINAL.

A well-rounded survey of the accused from the anthropological, medical and psychological standpoint is most desirable. What is essential for success is the friendly co-operation of the Court with the offenders' friends and relations. The attitude and obligation of the family physician must be assumed. As Dr. Healy says, 'entirely undesirable is that brutal suspicion so frequently seen in prison and police officials justified by the more or less prevaricating retort to coarse enquiry.' The place to study the criminal is in the open. The best stage for study is after arrest and detention, and before the sentence is passed; because information is then available from many sources, and proper treatment

may be determined in the light of facts disclosed by the examination.

The examination of the criminal in the light of Criminal Science has been planned elaborately by the Italian school. Gina Ferrero has summarised the main points on the subject in her work 'The Criminal Man.' This is necessary for ascertaining the extent of responsibility, and probability of recidivation and for the guidance of the officers of orphanages, rescue homes and other institutions intended for the reformation of delinquents. The psychic and physical individuality of the offender should be studied in every case. The antecedents of any individual may be known by means of questions put to his relations and friends regarding past life, surroundings, and illnesses suffered during childhood, especially such of them as affect the brain like meningitis, typhus, convulsion, hemicrania, giddiness, etc. The neurotic conditions of each delinquent should be clearly enquired into. Queries about the prevalence of nervous maladies in parents, grandparents, uncles and cousins would throw a good deal of light on diseases, a pre-disposition to which is likely to be inherited as in the case of morphomania, tuberculosis, etc. The existence of criminality in the family must be made clear by questions asked with a certain amount of strategy and skill. If the criminal is married, his constancy to his spouse may be ascertained,

since offenders cannot usually be constant in this respect. The profession of the criminal must also be studied. The callings of cooks, tavern keepers, confectioners, bakers, etc., exercise a deleterious effect on the nerve centres, especially because they involve work in the night and interfere with sleep. Occupations which bring the poor into contact with wealth, like those of servants, cashiers and secretaries, afford occasions for the commission of crimes. Those of smiths, lawyers, doctors and soldiers present improved opportunities for criminal activity. The time of the year and the circumstances of the crime should be noticed. In the case of the recidivist, the age at which the crime is committed and the state of mind during puberty or senility should also be inquired into; the suspicions of the prisoner should be allayed by a series of general questions as to his name, native village or town, and other particulars, and the main questions must be put with some tact. The intelligence tests devised by Binet and by Healy may be used. As regards affection, the questions should relate to those who are near and dear to him and his neighbours.

Psychoses of the prisoner should be examined by medical tests. The exact degree of any emotion is measured by instruments called Plethysmograph and the Hydros-phymograph. The Vasomotor phenomena of the quickening of the heart-beat or

of turning pale or blushing are beyond the control of persons and should therefore be carefully noted. The rise and fall of the pulses and every stimulation of the senses are measured by corresponding changes in the level of the liquid in the volumetric tank, invented by Francis Frank, into which one of the hands is plunged. The volumetric glove devised by Patriz is an improvement on it ; the glove is made of gutta-percha into which the hand is slipped and sealed at the wrist by a mixture of mastic and vaseline, and then it is filled with air as the tank is with water. 'The greater or smaller pressure exercised on the air by the pulsations of blood in the veins of the hands reacts on the aerial column of an India rubber tube and this is to react on Marcy's tympanum—a small chamber half metal and half gutta-percha, which supports the lever carrying an indicator.' This lever registers the oscillations on a moving cylinder covered with smoked paper. If after talking to the patient on indifferent subjects, the examiner suddenly mentions the people or friends in whom the prisoner is interested, and then if he feels any rush of emotion, the rise and fall of blood consequent thereon will be registered on the moving cylinder.

The suggestibility of the prisoners may also be tested ; for some of them like epileptics believe themselves to be guilty of some offence on mere suggestion, when really they are not so. Defects

and ailments in the senses of criminals may be detected in a similar way. In the first stage of paralysis, orthographical errors are common and the letter R is not pronounced. Sensible answers are sometimes followed by nonsensical utteranees. Some pour their nonsense on paper, though good at speech; others are guilty of endless repetitions. Visual memories should be scrutinised along with handwriting in haste. The shakiness of the hand is best tested by Edison's electric pen which will indicate the slightest motion possible. Monomaniacs write with illustrations and symbols and criminals guilty of sanguinary offences have a clumsy but energetic handwriting while the thieves' writing is quite ordinary.

With respect to dress, murderers are said to be dirty and shabby. Members of secret associations in Europe are said to be fond of dressing with abundance of jewellery. Swindlers dress in faultless style, while the idiot and the cretin go about in torn clothes and sometimes emit a strong odour of ammonia.

In examining the physical expression of the criminal, scars and lesions may indicate the results of an epileptic fall. The marks left by diseases should be clearly noted. Skin diseases often occur in connexion with mental alienation. Scurvy indicates long confinement in prison.

Traces of acne rosacea are frequent in the forehead and nose of drunkards. Tattooing is serviceable for identification. In the great sensational Tichborne case, the bogus claimant was not, but the real Roger Tichborne had been, tattooed. Symbols of trade should also be studied. Persons may have portraits of those with whom they are associated in crime.

Sensibility to touch and pain is tested by Weber's Esthesiometer. It consists of two pointed legs, one of which is fixed at the end of a scale graduated in millimeters along which the other slides. The points are placed at a distance of three or four millimeters from each other on the finger tips of the patient, who closes his eyes and is asked to state whether he feels the distinct touch of two points or one. Sensibility is obtuse in criminals, for while in normal persons the points are distinguished when they are only two millimeters apart, with delinquents they are felt only with a distance of 3 or 4 or even 5 millimeters between them. While in burglars and swindlers the obtuseness is double that of the normal man, in violent offenders it stands in the ratio of 5 to 1. Sensibility to pressure is tested by various metal cubes of equal sizes but of different weights which are placed two by two one on each side of different parts of the back of the hand, when the patient is asked to say which of any two weights is heavier or lighter. Lombroso has

adopted an electrical apparatus for measuring general sensibility and sensibility to pain. It is called Algometer. It consists of an induction coil excited by a bichromate battery. The poles of the secondary coil are placed in contact with the back of the patient's hand and brought slowly up behind the index finger, when the strength of the current is increased till he feels a pricking sensation in the skin. The criminal feels the pain much less acutely than the normal man.

Sensibility to pressure is fairly sharp in criminals. If it cannot be localised by the patient it indicates brain disease. Responsiveness to heat is measured by Nothangel's Thermo-esthesiometer placed on the skin. Various receptacles of water at different temperatures are placed in a line and are furnished with thermometers; the patient must state which is the colder and which is the hotter spot.

The field of vision is measured by what is called Landolt's apparatus, which consists of a semi-circular band revolving round a column. The patient places his chin on a support kept in front of the semi-circle in such a manner that the eye under examination is exactly in the centre and looks directly at the middle point of the semi-circle. Then the testing object, for instance, a small ball, is moved along it. A graduated scale placed thereon marks the point limiting the field of vision and on it the result is registered. The

average limit of the normal field of vision is 90 millimeters on the temporal side, 55 on the nasal and 55 above and 60 below.

The strength of smell is tested by graduated Osometer invented by Ottolenghi. The criminal generally shows olfactory obtuseness. If the tongue protrudes on one side, it is a sign of serious nervous alteration. The general muscular strength of a man is measured by a Dynometer which the patient is required to press with all his might. The instrument is attached to a nail and the examinee is asked to pull in the opposite direction. The effort is registered on a graduated scale and is of importance for detecting the left-handedness of the criminal. Lombroso gives details of the method of measuring reflex action. His examination extends even to that of urine and fæces of the delinquent. The physical observation of the criminal must not be absolutely relied upon. Its results must be verified by comparison with the results of the psychological study of the criminal. An elaborate investigation of all the aspects of the delinquent will be necessary only in a very few cases and it can be adopted only with the scientific advance of criminal procedure in this country.

For the recording of particulars respecting the delinquents, Dr. Healy's schedule of data is worthy of observation. It consists of about eight topics on which information is necessary, *viz.*,

'family history, developmental account, nature of the environment, mental and moral development, anthropometric results, medical examination from a neurological and psychiatric standpoint, psychological examination, and lastly, the nature and manner of the commission of delinquency.'

'The study of family history includes the study of all facts about heredity, racial and national characteristics; of the industrial life of the family, and of alcoholism. Developmental history relates to conditions of disease or use of drugs of parents before conception, conditions of the mother during pregnancy, injury or accident to the mother, attempted abortion, circumstances of birth, to ascertain the effects of the use of forceps, etc.; the history of ailments and nutritional disturbances during childhood; 'the age of crawling, running, teething, talking and going to school'; the use of coffee, tea and tobacco, habits of sleep, sex affairs, the time and peculiarity of puberty and adolescent instabilities.'

'The study of environment means the investigation of residential changes, and the effects of languages used, of disorder at home and of the education and inclinations of parents. It also includes the examination of housing conditions, recreation facilities, family control, evils of bad company, moral and religious culture and the complete history of home life in the case of married men.'

'The study of the delinquent's mind must cover his school history in detail with an account of reactions to it, habits contracted at school; the character of the school with reference to whether it was public or private or sectarian, effects of company at school, the special capacity and pursuit of the child, etc. The examination of morals relates to the character of the association with the members of the opposite sex, the course of conduct during employment at occupational work, changes in dispositions and attitudes and moods, and the general behaviour of the culprit in society. The effects of incarceration, sentence of probation and of institutional life should also be investigated.'

The psychological examination of the offender has reference to traits relating essentially to his intelligence, capacity to remember and acquire knowledge, capacity to judge, fitness for mental exertion and his adaptability towards the environment. The intellectual powers of the subject independent of education should be compared to the effects of acquired knowledge on him. An observation of his moods, sexual demands, emotional interests and self-esteem is also indispensable.

LECTURE IX

PART I—PROPHYLAXIS.

This lecture deals with a novel conception, representing the fruit of modern criminological researches in respect of the prevention of crime, in a manner different in nature and scope from the methods of deterrence adopted by the existing Codes of Penal Law. The end of criminal science is to prevent the formation of criminals by successfully combating the manifold crimogenous forces that are ever at work in the individual and the social organism. The scientific prevention of crime is largely yet to be undertaken by the State. Except under a socialistic regime, the efforts of the Government may at best pave the way to the philanthropic measures of the people themselves. In the United States, it was the individual benefactor that showed the way to the State, although, in this poor country, where the enlightenment of the public or at least of the rich section of the community is extremely wanting, it is the State that has to set the example or at least help educate the public in the new ideas of the criminal science. At any rate, Legislation in this direction is possible only by raising an enlightened public opinion in favour of the scientific measures

of prevention. The State has no doubt made certain efforts by requiring many of the criminal tribes to beat their sword into ploughshare and pursue the farm life of the cultivator. Reformatory schools for juveniles and industrial institutions for adolescents mark the starting point of criminal reform, and the Indian Jail Committee in its report has suggested all the feasible ways of doing away with the evils of prison life.

Repression of the real causes of crime in an adequate manner is yet to be attempted in this country. Professor Ferri styles preventive measures 'Penal substitutes.'[1] His idea is that the Legislature should, instead of or in addition to framing penalties for various offences, counteract their causes by salutary methods of repression which may serve as best penal substitutes. For instance, smuggling may be stopped by the abolition of monopolies; city streets with electric lighting are a better preventive of theft and rape than the policemen. The use of steamships put an end to piracy. Payment of ample salaries diminishes the chances of corruption. Liberty of the Press may moderate political agitation. Scientific tests tend to prevent poisoning. Civil justice at a low price will diminish offences against the public order. 'Proper laws for the acknowledgment of illegitimate children and for indemnification in cases of

1. Ferri's Criminal Sociology, p. 242.

breach of promise of marriage will diminish abortions, infanticides and homicides committed for revenge. The marriage of the clergy will go a great way to stop sexual crimes.'[1]

There is no doubt about the fact that every human act has its basis in the mind, but the mind depends for expression on its physical correlate the brain, which is in its turn a part of the physical organism; so that morbid organic influences may affect the brain and its diseased, weakened or abnormal condition presupposes a similar state of the mind. The intensity of anti-social instincts and any innate defect of self-control can be checked only by the process of sublimation or education in high ideals and by a modification or change of the environment. A man whose instinct of pugnacity habitually seeks sudden expression must be impressed with the value of gentle behaviour, and placed in a situation which hardly calls that tendency into play or where he is morally constrained to exercise his patience. Lombroso's examples of born criminals show only that their centrifugal instincts are abnormally sharp and expressive. If such tendencies are not combined with weakness of mind, the individual is free to receive the influence of good moral education which may suggest to him a thousand and one devices to combat the force of his innate perversity. Healy tells us that defect

1. Lombroso, p. 246.

of self-control is likely to make itself felt mainly during the adolescent period. The individual suffering from alcoholic heredity must set his face against stimulants. His diet, as an Indian would put it, must be satvic. The person who is conscious of his weakness should fortify himself against its consequences. Some men are placed in such a favoured position of fortune that others bear their shortcomings in mind and regulate their behaviour accordingly. More difficult to remedy is the case of psychic constitutional inferiority where the weakness of will is based upon some unlocalised organic defect. The cause of it being mainly neurotic, dissipation of early life and the use of stimulants must be strictly prohibited in that case. The risk of handling these men lies in this, that so long as they lead their life in an institution they are free from the expression of their faults, which nevertheless treacherously lurk in to betray them on their return to open city life. Permanent colonisation is the best possible remedy for such people.

Hypersensitive men should be treated with due care for their feelings. Their shortcoming can be combated by a width of vision and experience of the complexity of life. Men whose criminalism is the result of obsession by mental imagery can be successfully dealt with by contra-suggestion and change of environment adapted to

individual character. Mental conflicts in youths must be readily sought for as a cause of their criminal inclination. They must be supplied with such healthy mental interests as will induce a worthy picture on their imagination. Inherited predisposition may be repressed by steady maintenance of organic health.

As regards psychoses, neurologists should be consulted as to the best treatment practicable. Suggestibility by itself is not crimogenous; on the other hand, it may serve to turn certain classes of criminals in the right direction. The difficulty is greater in the case of mental defectives. Idiots must be taken care of very early and isolated and the second-rate imbeciles, be placed in institutions. The high grade imbecile requires vigilant supervision and safeguarding from the influence of evil suggestion and must completely be under direction. As regards defectives of special capacities, they must be placed in positions where they can exercise their powers to the advantage of society. One who grades six years does tasks requiring short duration; an eight year grade imbecile does light work and runs errands; and a twelve year grade imbecile may handle machinery. Men conscious of their defects should be given better treatment in early life. The one great danger of the feeble-minded is the violence of their sex impulse which may lead to several crimes. A thorough-going surgical operation is

recommended by Dr. Healy. Defective girls must be segregated and be subjected to family espionage. The best treatment for the large number of the feebleminded is said to be colonisation combined with industrial education and employment under supervision.

Now turning to the organic basis, we find that pathological and neurotic conditions are responsible for criminality. This teaches us that the generation of healthy human organisms is a *sine qua non* of social progress. The inherent qualities of the human race are sought to be developed by the science of Eugenics. What Socialism is to the economic school, Eugenics is to the anthropological. The application of the principles of heredity has led to wonderful results in the art of breeding. Why should not man avail himself of these principles and produce a better type of humanity? As Dugdale said, 'Heredity has a tendency to produce an environment which perpetuates it.' Ribot says that genius is hereditary. Professor Kellikot regards as impermanent the influence of environment by itself. The making of children is the highest function of social life. In the animal kingdom the law of natural selection prevails inasmuch as weak individuals are carried off by diseases or starvation. In human society the weak are protected, and are at liberty to transmit their defects to future generations. This leads to

degeneracy, and the general average is dragged lower and lower in each successive generation. This should be counteracted by social arrangements.

Eugenics aims at the reproduction of better types by encouraging the marriage of the specially fit and preventing the mating of the specially unfit. Medical examination must precede marriage and fitness for married life must depend on a moderate general physique, soundness of mind and freedom from such diseases as may be communicated to the offspring.

Pathologically, crime has its source in degeneracy; so that in order to ascertain the extent of degeneracy in a community, criminal statistics should be shaped in such a form as to supply all the information needed for the purpose. There must be maintained a laboratory for the study of mental diseases. There should be a compilation of the geneology of prisoners and institutional charges as well as the family history of such of them as are members of the criminal classes. Effective steps should be taken not only to prohibit the latter from falling into crime, but also to lead them to better ways where they might find their living more easy and profitable. Wherever there are institutes, the inmates thereof should be subjected to criminological examination by trained field workers. In this connexion, the work of the psychopathical Institute, organised in 1909 under

the direction of Dr. Healy, comes to our mind. Dr. Healy scientifically examined a thousand cases of individual delinquency outside the areas of institutions, and discovered a variety of individual conditions, which could not otherwise have been brought to light. For efficient collection of information, there must be a permanent board of criminal statistics charged with the duty of prescribing the forms in which the records of all Criminal Courts, Police Boards and Prisons shall be kept and of specifying the items regarding which entries should be made. The forms should be uniform in respect of all institutions of the same class and the board should preserve all psychological and anthropometric data available regarding the criminals. There must be a bureau which should issue general instructions governing the collection and verification of facts. Dr. Healy recommends the adoption of the heredity chart prepared by the Eugenics Record Office of Cold Springs Harbour, New York, or a necessary adaptation of it. He also advocates the establishment of a chair of Eugenics in Colleges and Universities.

Legislation in the direction of matrimonial selection is not easy in this country. In America, several States have adopted the eugenic law of marriage which prohibits the marriage of the mentally and physically unfit.[1] A law to that

1. Mosby 'Crime and Its Cure,' p. 107.

effect was passed on the 26th June, 1913, by the Legislature of Pennsylvania. According to its provisions, clergymen are forbidden to marry brides and bridegrooms in the absence of a medical certificate. This rule was adopted in North Dakota and other places very soon after. There is an international association for the development of Eugenics started by Dr. Alfred Ploetz. Eugenics deprecates war which often carries off the best type of men.

In order to prevent the transmission of defects to posterity, Dr. Gideon Lincecum [1] advocates asexualisation of defective persons and advises Vasectomy in preference to castration which is a painful process. The judgment in the case of Peter Feilan [2], who was convicted of rape on the 11th of September, 1911, in the Court of Washington, deals elaborately with this point. It is the process of ligating and resecting a small portion of the vas deferens, *i. e.* sperm duct. This is also called 'Rentoul's operation.' In the females, it consists in removing a part of the Fallopian tubes. It takes only three minutes and it is not disabling like castration. Vasectomy may be opposed on theological grounds in this country, but if it is restricted to confirmed criminals and degenerates, the rules of religion do not apply to them as they are outside the pale of

1. Mosby 'Crime and Its Cure,' p. 111.
2. 126 Pacific Reporter, p. 75 (Mosby, p. 118.)

those for whom Shastras are intended. Their cases must be regarded as exceptions. Dr. Healy prefers castration, because, he says, it cripples the sexual promptings. But it is a serious mutilation from which a person will scarcely be relieved, although it may be the best for the worst of criminals. The advisability of asexualisation in preference to capital punishment was discussed before the Legislature of the State of Texas. The disadvantage of Vasectomy lies in that it does not prevent sexual gratification. Hence, it may not stop but even further the spread of venereal diseases. Sterilisation is recommended for confirmed idiots, imbeciles, rapists, drunkards, epileptics and syphilitics. In the State of Indiana, there is a Board of Examiners to decide upon whom the operation should be performed. New Jersey provides a surgeon and a neurologist for the task.[1]

Germinal variations and differences in hereditary characteristics are directly the result of adaptation to varied physical environment. The effect of a hot climate upon temper is well-known. With a view to prevent its evil effects, Hindu Shastras enjoin an early bath every day. Some of the books advocate even three baths in the course of a day. Brahman colonisers of old mostly constructed their villages on the banks of rivers. Filtered and purified earth powder

1. Mosby 'Crime and Its Cure,' p. 113.

obtained from the dust at the root of the Bilva tree is recommended in place of the soap of modern times. The purification of the air is according to Dayananda Saraswati promoted by Agnihotram. Water-falls are consecrated for baths and people visit them on festive occasions. Lombroso's advocacy of fresh or cold water baths to allay the heat of the system finds its counterpart in these Hindu Shastric provisions. The penance-maker is required to bathe in cold water every morning, perform his *japam* and meditate upon the Almighty. The sea is regarded as a place consecrated for bath at least in certain places. Dhanushkodi is situate at the meeting place of two arms of the sea about the tip of a small island in a very salubrious clime fit for indulging in healthy baths.

Different races require different treatment owing to variations in climatic conditions and social progress. As Lombroso put it, 'an attempted rape upon a twelve year old girl is a different thing in the South (where sexual maturity happens early) from what it is in the North.'[1] Hence, the question of the age of consent must be differently decided for different climates. In order to check the excesses incidental to the different periods of life as youth, adolescence and age, measures should be devised for the healthy training of the mind. Home training, parental

1. Lombroso, p. 247.

control, sufficient nourishment and hygienical clothing are necessary to repress the evil tendencies of childhood. Orphans and castaways should be entrusted to good families for the purpose of home training. For adolescents, the really effective treatment consists in 'the pre-emption of the field with healthy interests before the age of 13 or 14.' Formation of bad associations which stand in the way of desirable social developments should be instantly repressed. Every youth must be equipped with the ennobling knowledge which may help him to nip in the bud the seed of delinquency arising from mental vacuity. The adventurous impulses of youth must be perceived and turned into the safe channel of beneficent work for the community. The aged must be examined and if the signs of aberration are distinct, they must be segregated and treated properly by a physician. Their erratic courses are often pathological in origin.

The stream of emigration should be purified by selection. In the interests of travellers, the forests and other resorts of gangs of professional criminals on roadsides should be cleared of bad men. The country must be spanned by convenient roads. In ancient India, there were municipal measures for sanitary and traffic purposes. Buddhism in its nascent state aroused the philanthropic activity of the people of India, long before the birth of Christ. King Asoka's reforms

for the benefit of the people are well-known. Differences in custom among different tribes and classes were recognised in Hindu Law. Manu said: 'Custom is transcendental law' and every conquered community should, according to him, be judged in the light of its customs and privileges.

The question of sex is very vital and sexual relations and needs should be carefully regulated and provided for. Many a crime would not have been committed, if illegitimacy be not regarded as a mark of infamy on the poor offspring. The social position of the unmarried mother is most critical and calls for sympathy. Except in the case of degeneracy, illegitimacy should not stand in the way of the individual's progress in society. Difference in law in respect of the share of ancestral property due to illegitimate issue has been a fruitful source of fraud and crime in this country, and it is hard in most cases to determine the status of parties. Abortion will be avoided in many cases, if breach of promise of marriage be sternly prohibited by the State. Much of homicide and prudential marriages might be averted, if divorce be regulated and rendered feasible wherever necessary. When divorce did not exist, poisoning was more frequent among married people than among the unmarried. In certain cases, where the husband becomes chronically incurable, the marriage should be regarded as

invalid or dissoluble as the case may be. This was countenanced even in ancient Hindu law. Lombroso says that in Italy no fewer than 46 homicides a year are perpetrated with the sole object of putting an end to a union that has become insupportable.

Owing to the economic basis of married life, divorce is not easy and beneath the show of love, adultery sits fast and thrives well. It brings on sexual jealousy which is at the root of many a grave offence against property and against family life. With a view to keep off immorality from the normal family, the maintenance of prostitution is highly necessary and its evil effects should be mitigated by laws regulating the same. Aschaffenburg advocates the extension of regulated prostitution to rural parts, where people whose time hangs heavy might avail themselves of it, lest they indulge in more serious sexual delinquencies. No doubt, prostitution ripening into concubinage may undermine home life. In India, it has been a custom from time out of mind. In order to mitigate its evils, the trade of procurer must be done away with and it should be made impossible for keepers of brothels and of lodgings for prostitutes to overcharge and rob them. The improvement of the sordid condition under which they now live will contribute to greater legal security. Economically, prostitution is often a substitute for female criminality. The low pay

of the working woman is said to be a cause of prostitution. It is true at least with such of them as have an inferior mentality. Hence the necessity to better the conditions of the working classes. There is a movement to abolish brothels and put an end to State supervision in western countries. Abolition of prostitution will affect public health and morality. If certain houses and streets are set apart for prostitutes, subject to State supervision, that will be enough. Civilisation in a way influences rapes by multiplying workshops, mines, schools and colleges. Workmen furnish 35 per cent. of rapes upon children while the crime covers only 30 per cent. of all the offences among the people in the country. Hence, it is highly necessary that moral training and constant supervision should be provided for in all the civilised institutions where members of both the sexes come into constant touch with each other. Married women must be appointed as directresses or supervisors in the workshops where children work at night. Avoidance of child labour in mines has diminished a number of rapes upon children. Marriages should be made less mercenary and maternity and sisterhood should always be respected. The sexual criminals are just those that are worthy of human pity, the more so, as the guilty are most often those who are otherwise respectable people. Allowance of reparation for the woman seduced should

necessarily be ordered in every case of sexual delinquency.

The extension of towns and villages in wilder places will introduce civilizing influences in benighted parts. So far as the social classes are concerned, the arrogance of the powerful and the revenge of the weak should be put down, the one being the cause of the other. Superstition and prejudice should be removed by education or must be turned to good purposes. Associations of criminals should be prevented or destroyed and secret societies and resorts of habituals must be carefully watched. Those who enlist the aid of criminal associations for political purposes must lose all political rights. Persons arrested for such participation should be sent to distant localities or transported to islands far away from their natural field of action. Despine suggests the arrest of habitual criminals when they boast that they are going to commit crime, if there be a probability that the act would follow the word.

The evils of crowding should be counteracted by establishing, in small towns or villages far away from cities, institutions which draw a large number of persons, such as Universities, Academies, Scientific Laboratories, Military Colleges, etc. The emigration of the unemployed must be encouraged, while the stream of immigration must be purified and selective. Lombroso advocates the practice of Neo-Malthusianism as a check on

the increase of population. The press as an instrument of civilisation must be utilized for the protection of society. Instead of being a source of black mail, fraud and libel, it should represent the unifying and enlightening elements in the State.

Modern economic conditions have widened the scope for the practice of swindling. Lombroso says: 'In the highest society, under the form of financial corporations, we shall see the true gigantic system of swindling flourishing permanently sheltered behind the most high-sounding and honoured if not the most honourable names.' It is the opportunity that tempts the swindler. Hence, it should be minimised by keeping commercial concerns under close inspection. Speculation in money should be discouraged, and corporated banks having industrial or agricultural objects should offer effective guarantees that losses will be made good. The bankers and jewellers of London and Paris are said to have dogs trained to smell the odour of swindlers 'who bathe but rarely.' Almost all scientific appliances are employed for catching hold of the swindler, *viz.*, the telephone, instantaneous photography, telephotography, etc., which help to arrest him before he leaves the place where he attempts fraud. In India, the swindler employs the disguise of ascetic or mendicant and appearing as a fit recipient of gifts of

charity, abuses the obligations of the charitable-minded.

The betterment of economic conditions is a great prophylactic remedy. The excess of wealth too rapidly acquired as well as poverty is almost always a danger. Equal distribution of the returns of labour; making work available for every able-bodied person; limitation of the working period according to the age of the worker and the nature of work; the supply of good grains to peasants in rural parts and cheap medicines in malarial districts; the reduction of taxes on necessaries; the settlement of difficulties on arbitrations; the encouragement of emigration from over-populated parts to more convenient spots and similar economic measures should be undertaken by the State. Co-operative institutions must be started and managed, in the interests of the poor, by men of good ability and character; capitalism must be counteracted by co-operatvie associations which may substitute a collective capital for a number of men of small meaus.

Crime in the political sphere is concealed under a thousand forms and is hard to eradicate if political powers and privileges are not distributed in the most judicious manner possible. The institution of parliamentary government has in a way increased lack of responsibility. In the electoral contests, the man who points out the real evils and proposes to remedy them injures the

interest of some powerful candidates. The respectable man who does not combat abuses openly, injures none and his misdeeds go unrevealed. Men in high positions must be saddled with definite responsibilities and their conduct should be subjected to the closest scrutiny. Political corruption is according to Spencer checked by decentralisation, because, when a central government is entrusted with the management of vast sums of money to be spent on public works, corruption inevitably arises owing to lack of immediate control of the public on the state of finance. The policy of decentralisation gives a freehand to detect and remove local evils and abuses as immediately as possible. Where there are differences in civilisations, a uniform law breeds continual discontent. Where the people are not prepared for reform, the State will do well to avoid political evils by preserving the *status quo*. The future of society politically lies in training a people to rise and contend against difficulties of their own accord. Party Government is useful to check the political excesses of the dominant party. The Roman tribunate representing the people prevented popular risings in the Roman Empire by continuing for centuries. Extension of universal suffrage to the ignorant and corrupt may be turned against liberty itself and hence must be guided by the rational voices of men of high worth and clear insight.

Judicial independence is a great necessity to check the growth of crime. The diverse departments of Government should be kept under control by a system of checks and balances. None of them should be entrusted with unequal powers so as to override the interests of the people. In society, the various classes that compose it should be in a state of mutual co-operation and interdependence. If any social class arrogates to itself the heights of power, the structure of the social fabric may become tottering to its fall. The struggle of classes should be avoided by their powers being balanced against one another. The abuse of a public office is a great crime. Russia and Italy have been governments of officials who absorbed and stifled everything that had vital force in the country and under pretext of sustaining life destroyed it altogether. For the prevention of political crimes, the constitution of the Government must be flexible and easily adaptable to the political needs of the day.

Alcoholism is one of the worst crimogenous forces that society should strive to repress and resist. As early as 1845, the famous Maine Law was passed which expressly prohibited the manufacture and sale of spirituous liquors except for medicinal purposes. In Switzerland and Prussia, law prohibited the sale of liquors to students, minors and insane persons, and damage

due to drink entailed responsibilities on the sellers. In England, in 1856, the sale of liquor was forbidden on holidays. In 1871, Gladstone limited the number of public houses by decreasing licenses to be issued.[1] In France and the United States, the tax on the sale of alcohol is prohibitively high. In Holland, the law of 1881 forbade the sale of alcohol in large quantities. In Switzerland, the privilege of alcohol export and manufacture and its sale in large quantities belongs to Government. By the avoidance of alcohol, average stature and strength of life are increased. Beside restraints upon dealers, punishments for appearing drunk in public must be strictly enforced and contracts made in the wine-cellar should be invalidated.

Individual efforts in this direction are illustrated by the activity of temperance societies in India, England, America and other countries. In Ireland, Father Mathews is said to have diminished one-third of the crimes in the country by combating alcoholism among the poor. In Glasgow, coffee-houses were opened where workmen most frequented the whisky shops. In London, tea-rooms and theatres were set up for workmen and the poor on holidays. In the course of five years, 4,000 distilleries and 8,000 liquor saloons were closed by the efforts of temperance advocates. In Sweden, money was collected to buy up the drink shops of a district and in

1. Lombroso 'Crime and Its Causes,' p. 266.

consequence, from 1851-1857, serious crimes decreased 40 per cent. and lesser crimes 30 per cent. in that country. American women check their husbands and brothers and importune liquor dealers by their prayers and exhortations to close their shops. They bear with resistance and overcome it by indomitable energy. Some of the benevolent captains of industry have adopted the devices of (1) paying the workman's wages to his family in the morning instead of at night and never on a holiday or the day before, (2) giving additional pay to every workman who would give up his ration of grog, (3) sale of coffee and food in the neighbourhood of factories. The tax on tea, coffee and sugar which serve as substitutes for alcohol should be lowered to the minimum. The quantity of alcohol that each man must have in his house must be restricted. Wide streets and good buildings are necessary for workmen in order to tempt them away from dram-shops to which they retire after their daily work because of the absence of amenities at home.

Alcohol being a stimulant, some form of mental stimulus that would injure neither body nor mind should be substituted for it, at least on important festive occasions. Lombroso refers to a workman at Turin who asked that theatres should be kept open all day on Sundays at a low rate of fare because of their serving as a strong mental stimulant in place of alcohol. The

effects of the theatre as a good substitute is plain from an incident in the south of Italy, where a wine shopkeeper had the leader of a troupe of comedians thrashed well on a holiday.

Temperance societies afford substitutes and cures of various kinds and supply instructions in morals by means of lectures and debates. They have established libraries and reading rooms by way of providing for the intellectual stimulation of alcoholics. Association with good revivifying company is a great preventive of alcoholism. Kovalesky advocates isolation and absolute deprivation of all alcoholic drinks for four to twelve months and advises baths in the vapour of turpentine or sulphur bath as an antidote to the effects of alcohol. Strychnine bromides and tincture of nux-vomica are also recommended as effective cures of alcoholism. Magnan advises a light strengthening diet consisting of wheat, vegetables, sweet drinks, bitter infusions, tea and coffee. In the case of continued drunkards, he proposes committal to an asylum for about a year and a half. In Switzerland, there are alcoholic hospitals which receive offenders during intoxication. People who have dissipated their property in drunkenness and persons found drunk on the street a number of times should be treated in those hospitals for an indeterminate period till their cure is effected. Hypnotism is said to be highly effective in respect of individuals who are abnormally

suggestible. Muscular labour for those who arenot accustomed to it serves as a stimulant in place of alcohol. In this connexion, Forel's Asylum at Ellerton deserves mention; it is a kind of farm colony under the paternal rule of a superintendent who is at once administrator and educator of his charges. "These form one family living in common a simple and healthy life, encouraging one another, busy with regular work and subjected to total abstinence."[1] This has been tried and found effective in about three thousand cases. The extension of such colonies is most desirable wherever alcoholism is rife.

PART II—EDUCATION AND RELIGION.

We shall now consider the influence of the two great institutions of civilised societies which are of fundamental importance in enriching and ennobling human life, *viz.* education and religion.

Education is an important factor in our equipment for life. Every one aiming at a successful career should know the nature of the world and the nature of the society in which he lives and moves. He must be imparted a minimum amount of information from physical and natural sciences. 'Biology and Psychology give him a knowledge of evolutionary processes

1. Lombroso 'Crime and Its Causes,' p. 273.

and an understanding of his own nature and that of his fellows and of society and social ends.'[1] Adjustment to surroundings will avoid criminality and failure to do so is due to ignorance. Further, education makes a man understand the justification for the means of social control. If knowledge is meant to be a guide to action, then the influence of good knowledge is sure to make itself felt, ever so lightly it may be. Education develops a fair degree of freedom of choice and initiative. Training in a profession to which one is fitted goes a great way to repress criminality. By drifting into unsuitable occupation, chances of failure, unemployment, vagrancy and then delinquency become the regular course of experience for the average man. With the improvement of scientific education, there will be an advance or a re-organisation of the economic system which will eliminate unemployment. A love for suitable labour must be cultivated in schools. School discipline has a great moral value. It acquaints one with polite manners and gentle practices. In the school, the child is brought into touch with a greater number of conflicting interests than in the house and is led to adopt more social points of view; further, he learns the value of time which will help him to adjust himself to timely requirements. The virtue of recreative games is best apprehended at schools.

1. Parmelee's 'Criminology,' p. 221.

Recreation for non-school-going children is only in the streets subject to immoral suggestions and temptations. Ignorance of criminal law is the cause of much occasional crime.

Dr. Mercier says, 'The acts which duty dictates and which duty forbids are known not so much by innate preferences as by instruction and observation.' Education must be extended to honest men to prevent idleness and precocious lasciviousness. Physical training is a school of continence and chastity. Youth must be given a taste for gymnastics. Moral education must be directed to correct the passions and instincts rather than develop the intellect. Sergi said: 'Education should strengthen the character where it is weak and create it where it lacks direction.'

One condition of education is that it must not be out of harmony with the times. What is required for the present day is scientific education rather than the classical one. Technical education must be extended in all directions, the first place being given to manual work. Besides, education must be adopted to various classes of criminals. Born delinquents will not be amenable to continuous work. They have an inclination to be insubordinate. They must be separated from others. Youths among them should be grouped according to age, degree of depravity, etc., in such a manner as to prevent the propagation of

kindred vices. The influence of habit is immense. Even the worst of men can be made tolerably good by being habituated to right modes of conduct.

The influence of education is underrated by Professor Ferri and other members of the Italian School. Ferri's idea on the subject is very meagre. 'Education' says he, 'is only the direct and methodical influence of the educator upon his pupil.'[1] In his physical, intellectual and moral make up, each individual is said to be the product of a countless number of ancestors to whom he is bound by unchangeable laws of heredity. The power of education, which acts only during a limited number of years, is very little compared to that of influences to which a man's ancestors have been subjected for thousands of years. He deems it impossible to shake the seat and composition of anti-social tendencies which have struck deep root in the born criminal or the incorrigible. His view represents that of a host of writers on this subject. But education should not be merely regarded as the influence of the teacher. It should not be separated from what is called 'atmosphere.' Ferri neglects to note the difference in nature and intensity between the needs of different men. There is nothing like any anti-social strata imbedded in human nature. Social feeling originates even in animals. Primitive men were not enemies

1. Bonger 'Economic Conditions and Criminality,' p. 119.

to one another. A child is never born with positive knowledge. If needs are met and the environment is bettered, the influence of education would not be obscured. The great biologist Spencer emphasises and illustrates the influence of habit even among lower animals. If Ferri quotes him to support his own position that the moral conduct of a man can best be studied scientifically only by regarding it as part of the conduct in general of all living beings, we may quote in turn the same author's illustration for educative influence. 'Some carps put into an aquarium with smaller fish were in the habit of eating them. Being separated from the latter by a glass partition, they at first threw themselves against it in their endeavours to seize their prey. On perceiving the uselessness of their efforts, they ceased their attempts and subsequently, when the glass was raised, they lived with the smaller fish without trying to eat them. Habit made them harmless, if not innocent. It is thus that a dog trained by habit and education ends by not stealing.' Garofalo who holds the same opinion describes the influence of a loving mother upon her children. 'The children of a loving mother,' he says, 'become accustomed to watch for the approbation or blame in her look. What penalty can be greater than the grieved reproof which the mother gives the child who had lied or maltreated a companion? Such a child will acquire month by month, year by year, an instinct

opposed to falsehood, theft and cruelty, or a physiological aversion thanks to which crime will be for him no longer possible.' Thus the problem of education will be solved.

Successful education is a real problem in as much as each little being who goes to school is a problem with several unknown quantities. Irritating the child without convincing him that he has done wrong is an influence for the worse. Punishment must be mild and adapted to the character and natural instincts of a child. Disobedience must be met by a refusal of sympathy but not by anger which may produce a dangerous reaction. If a child injures a valuable article, it must be bought at the expense of a delicacy supplied to it. In reformatories, strict punishment often misleads and alienates children. Strict parental control must be wisely regulated. It is the dangers of promiscuous association either in the street or at school that undermine the character of children. One able school-master said: 'The children who do the mischief are never alone.' The majority of tramps and vagrants represent the effects of defective education and evil association in childhood. The methods of education should be based on the psychology of children. While born criminals should be educated more or less on Lombroso's principle, ordinary children should be advised, warned briefly but frequently, and encouraged to

work by small rewards and a great deal of liberty though without any relaxation of surveillance. Instability incidental to childhood makes them forget rules and penalties. Teachers should therefore set a good example to them. The youths should be inspired with a desire for right modes of achieving their ends, with a love of work and a feeling for noble arts. Good discipline is also cultivated by means of gymnastics, vocal and instrumental music, declamation and amateur theatricals, etc.

The fitness of the educator is an all-important factor for the successful development of children and for the adaptation of training to various classes of individuals. The master must know the nature of the human soul, how it works and acts individually and in society and what organic processes may alter its manifestations and what external and social causes may disturb its normal functions. What is needed for children is a tutor and a matron, and for the adults a strict disciplinarian with knowledge of human nature. Moral and energetic families at a distance from the corrupting influences of the city may be entrusted with the care of children. The child so placed becomes fond of the new home and imbibes its healthy influences ; it is what is called moral training by adoption.

The influence of education combined with religion has been magnificently illustrated by the

splendid results of the philanthropic efforts of large-hearted and resourceful religious leaders like Dr. Bernardo. He says: 'I have observed that a new and healthful environment is more powerful to transform and renew an individual than heredity is to fix a blemish upon him. Cleanse and purify the atmosphere at once if perverse instincts are to be obliterated.'[1] He was himself very poor at the time when he took the vow to devote himself body and soul to the rescue of neglected children. At first he was able with the aid of contributions from others to afford shelter only to 25 children. But he knew how to transform sympathy into money and recast it in charity. In the course of 30 years, he was able to find means enough for the support of 50,000 children from a few weeks old up to eighteen or twenty years. He reclaimed 85% of children from drinking parents. Out of 9,000 children he educated, he says only 1 per cent. have gone wrong. Every protected child represents a rescued generation. He has to spend only £10 upon every ward of his. He receives all deserted children, examines their past and keeps them under observation for a time, then he chooses a trade for them and sends them to a farm in England or in Canada. Isolation of the children in small groups is adopted for the full development of individual aptitudes. According to

1. Lombroso Ibid, p. 320.

age pupils are divided and placed in different buildings. Children of all ages are received—those from three to five in a place called The Tiny House, those from four to nine at Jersey and so forth. At thirteen, work is given but no luxuries are permitted, though decencies are allowed. Bernardo's houses for children are situated in the midst of gardens and are supplied with good nurses. In Canada, he has an agent to place the children on a farm and keep watch over them. Contracts are made with farmers for three or five years. Bernardo has also organised an institution for girls in a little village at a short distance from London. Each house in the village holds twenty girls watched over by a house-mother.

Although in Catholic countries philanthropists and philanthropic institutions are not so numerous as among the Protestants, one saint corresponding to Dr. Bernardo deserves mention. He is Don Bosco who brought into existence several charitable institutions at Turin and other places and interested himself in the lot of young delinquents. He visited the needy young workmen, got them employment and guarded them against temptations. In his institution young people of all classes are received. He also paved the way for the betterment of Silesian priests. Institutions due to his inspiration do not receive those above the age of 14 or 15 and convicts and epileptics.

Every inmate is admitted into school at 9 years of age and at 12 is put into the workshop. In 1850, he founded a mutual aid society to help members who fell sick and were wanting work. Each member of the society was required to pay 5 centimes every Sunday and no one could avail himself of the advantages of the institution till he had been a member for six months. Don Bosco had to struggle against the traditional tendency of the Catholic Church rather to care for rituals than for social work. 159 societies for mutual aid were in course of time established at Turin.

Other beneficial institutions elsewhere deserve a passing mention. In 1853, a philanthropic workshop was started for vagrant children in New York. It was in this way ; a director of business announced that an employee for 12 dollars a month was wanted but when 20 offered themselves, he said he would take up only those who are possessed of good handwriting and at the same time offered to teach handwriting to such of them as were willing to be instructed. At once several took up the offer and a school was formed.[1] Primary schools of carpentry were in a similar manner opened by a philanthropist ; meals were served therein and entertainments provided at 4 or 5 cents each. When schools for vagrants were started, the children broke the windows and

1. Lombroso, p. 316.

shouted 'we don't want any schools'; but being under no compulsion to go or remain, they all remained and became orderly. For girls, employment was provided so as to bring them into touch with good housekeepers with a view to promote their efficiency in domestic service. Many of the girls so reclaimed abandoned their vices with their rags, and became excellent mothers. Day schools for refractory children between the age of 6 and 12 were started in several places. In a day school at Milan, out of 700 children received since 1840, not a single one of them was convicted after leaving school. Corresponding to it, the Ragged school in London started as early as 1818 is an asylum for neglected children and orphans; the inmates are furnished with food, clothing and instruction. It is not a compulsory institution. Children are allowed to enter and leave of their own accord. Many a child picked up in the street was protected by this school. There are also homes for little boys in the form of little villages or colonies given up to unfortunate children. The inmates are divided into groups like families and taught arming, shoe-making, mechanics, etc. In Glasgow, in 1883, Mr. W. A. Smith started the 'Boys Brigade' in which he enrolled little vagabonds of the streets by hundreds; it numbered 20,000 boys in course of time. Owing to his efforts there has been a large reduction in vagrancy, theft, and pickpocketing. Vagrants

were reduced from 3,829 to 994; thieves from 948 to 245 and pickpocketing from 813 to 465.

In Protestant countries charity was evolved on lines of mutual aid. Geneva and London have been very famous for their numerous philanthropic institutions. At the dawn of this century, Geneva had 400 and London 120 institutions for all kinds of people who wanted aid. Out of 120 institutions in London, 35 were devoted to children for various purposes; even for taking children to bath and protecting them at home, there were several societies. There were recreation schools of industrial and musical apprenticeship. For women young and fallen and otherwise disabled, there were 48 institutions and for men there were 46 in the form of hospitals, employment agencies, societies for protection of teachers, for employment of immigrants, for providing against industrial accidents, for improvement of lodgings and for procuring cheap rented lodgings, etc. People's kitchens, family hotels for poor foreigners, special savings banks, institutions for the aged and societies for the care of children of poor prisoners and a countless other asylums represent the vast humanitarian efforts of Protestant philanthropists. While there are central committees for direction of affairs in various institutions, no patrons are needed for them as they are never gratuitous. In the domain of education, free schools, night

schools and vacation schools are the result of private initiative. Societies to aid released prisoners, to protect women in peril, to afford refuge for alcoholics and to protect domestic servants against the perils of their position are all directly prophylactic. There are similar societies which undertake the sale of articles manufactured by poor women. There are mutual aid societies for different trades, for different nationalities and for different religions (Vide page 282 of Lombroso for statistics.)

The Boy Scout movement started by Baden-Powell which counts more than a million members all over the world is a source of immense moral influence for young humanity at large. The English Society for the Prevention of Cruelty to Children has saved more than 25,000 children from abuse and torture and about 63,000 from hunger and cold in the course of ten years. They received complaints against 47,220 parents and prosecuted more than 5,000 parents for ill-treatment of children. The members of this association penetrated deeply into the most secret recesses of the criminal world hidden even from the eyes of the regular Police. The inspectors appointed by the society have been given an official recognition at courts. [1]

The Salvation Army is a fountain of philanthropic efforts. It presents all the aspects of

1. Lombroso, p. 283.

charity ancient and modern. It was founded by Booth in 1892 to combat criminality in all directions. It contends against alcoholism by creating cheap temperance hotels and people's kitchens. It provides dormitories to thousands of vagrants. Employment agencies find work for about 20,000 persons. In its elevators many are employed for paid work or taught a trade if they know none until situations can be found. They maintain farm villages where poor sturdy men are put to work. In India, the Salvation Army is doing its best for criminal tribes by establishing settlements for them in various parts of each province. In combating alcoholism the Wesleyans and the Order of Good Templars have also done much. It is more by an equitable distribution of work among all the unemployed than by charity that the conditions of the poor will be improved economically and morally. Unless the beneficiaries are given full freedom of acting up to their convictions and beliefs, charity will prove an enslaving element.

Two of the American Institutions deserve consideration. The 'Educational Alliance'[1] at New York is an association rendering assistance to Jewish emigrants from all parts of the world. They can obtain instruction there in gymnastics, cookery, domestic economy etc. Aid is rendered to obtain employment. Recreation rooms, baths

1. Gina Ferrero, p. 172.

and lodgings are also provided. On holidays the Society organises lectures, concerts and excursions. When there is need it supplies medical and legal aid. It also opens a number of boarding houses in the country, wherever there arises a necessity for them during vacation times. Another Jewish Society in the same city is the Hebrew Sheltering Gordon Society which is an orphanage for the Jews. A Committee finds homes for all children under 6 years of age and for those who are deceased in private families. The managers of this institution take care to avoid contrast between institutional and home life. A detailed description is found in Gina Ferrero's Criminal Man, p. 161. The inmates are allowed to dress according to individual taste. Children are even encouraged to take an interest in social and political life by allowing them to partake in miniature republic organised for the purpose.

The work of Wesleyans may be illustrated by a brief reference to Rabbi Gothiel's sisterhoods. These sisterhoods are wholly under the direction of women. Each of these is open to all the poor who are in need of aid. A Resident Directress with a number of ladies is engaged in helping applicants. These sisters render their best aid in departments well known to themselves. Some solve for the poor simple legal questions; take unruly children to juvenile courts and look

after them; trace an absent husband or wife and register births and deaths. Certain others similarly take charge of medical work. Another set of persons teach singing, drawing, needle-work and cookery. A permanent kindergarten for the children of women who are obliged to work outside their homes is attached to almost all sisterhoods. Except the Directress, all ladies volunteer their services. A small fee is demanded for every work except in the case of the very poor. This helps the ladies to run the sisterhoods without depending on donations or subscriptions.[1]

In this country, such institutions are very rare at the present day although temples and monasteries once rendered effective aid to the poor in all matters in ancient times. Now Indian charity should be evolved on modern lines without detriment to its ancient spirit. Of the latest established philanthropic institutions, the Gurukula Academy at Hardwar and the Bholpur School of Sir Rabindranath Tagore deserve mention. The former was established by the efforts of Swami Dayananda Saraswati, the founder of the Arya Samaj, as best suited to the needs of the country. He suggested that the first essential factor of the ancient system was the imparting of free and compulsory education for a period of at least eighteen years to boys and ten years for

1. Gina Ferrero, p. 170-171.

girls. His view is that children should be compelled by the State to go to school after the fifth or the eighth year, and that there should be seminaries in sequestered places. Before education is completed the student must not enter married life. He considers that manual training is a fundamental part of the education of boys. In the Gurukula Academy, all distinctions of caste and rank are levelled up and every student is given facilities to unfold his mental, moral and spiritual faculties. Self-control, firmness of mind, strength and energy are cultivated with great care. Religious education is imparted through instruction in vedic philosophy according to the interpretation of the Vedas by Dayananda. There is another Anglo-Vedic College at Lahore where English education is also supplied along with Sanskrit.

At Bholpur, the school of Rabindranath Tagore flourishes as the abode of peace (or Santiniketan). The place was originally a secluded part where the father of the poet retired for solitary meditation. But as early as 1901, 'the voices of children have broken the solitude of the waste.' The institution provides instruction for more than two hundred boys and more than twenty masters have their quarters in the settlement. It is run on indigenous lines and discipline there is not a mechanical routine. The boys sit for instruction on mats under the trees,

and they are free to acquire useful experience by coming in direct touch with nature. For a quarter of an hour in the morning and in the evening, the boys sit in meditation which is closed with an inspiring hymn from the Upanishads. Twice a week they assemble in the chapel for common worship and they are exhorted to good living by means of lectures. The children wash their plates and clean their clothes. They have managing committees elected by them. Discipline is enforced and punishments are meted out at courts of which the judges are elected every month by the boys. There are small cause and appellate courts created in this way and they decide at least once a fortnight all the cases which arise in the life of classes and the playground. Thus the advantages of self-rule are brought home to the students. The pupils are interested in the enlightenment of the masses. They go out sometimes among the Santhals of the neighbouring villages and give them instruction. Now this Santiniketan bids fair to become an International University for the world at large. Technical schools in India teach work to people in Baroda, Ahmednagar and a few other places.

All the abovementioned philanthropic efforts were inspired by devotion incidental to new religious movements in the East and in the West. Although they have directly little to do with the

doctrines of religion, it is religion that really supplied the impetus and the momentum to all these institutions. Lombroso gives us an interesting illustration of the potency of religious suggestion in reforming criminals. Delia, a motherless girl, was brought up in a convent. She deviated into sex offences and abandoned herself to a life of prostitution and drunkenness, and joining a band of thieves of whom she became the head, fought with the police and was arrested seven times. The only redeeming feature in her nature was that she would not permit the weak to be struck in her presence and defended the sick against robbery. One day, the fading of a flower which was given her by a lady missionary friend of hers put her in mind of the day when she was as pure as the rose. Immediately her resolution was taken that she should turn a new leaf in her life. From that day she gave up opium, tobacco, and other deleterious drugs and drinks. She also exhorted 1,500 convicts not to serve the devil. In eleven months she converted more than 1,000 persons.[1] Delia's story reveals the power of religious passion to stifle all wicked emotions. In early life religious teachings exert a powerful impression upon the emotional nature of man owing to its mystic features. Moral teachings of social value are communicated with the greatest effect through the medium of religion.

1. Lombroso, p. 293, 94.

No doubt care should be taken lest superstitious ideas and beliefs lead to misconstruction and misrepresentation of religious truths.

As regards the influence of art, Aristotle was of the view that works of art had a purgative and purifying effect in cleansing the individual of the passions which distress him. Art is also said to give a vicarious satisfaction to one's impulses. Artistic works should be truly moral and inspire social feelings and impulses. The influence of ennobling pictures of great men is undoubtedly an influence for the better. Religion in our country comprises in its temple a combination of all that is fine and edifying in the fine arts of music, poetry, architecture, painting and sculpture. Conflicts of beliefs and superstitious ideas can be averted by adopting the principle of toleration and by permitting freedom of discussion in respect of the underlying bases of the religious systems of this country. It is the philosophical substratum of several Indian creeds that lends them their permanence rather than the mythological foundation of the popular faith. A thorough understanding and impartial furtherance of the various systems of Indian philosophy must go a great way to induce noble sentiments in the minds of the people and thereby arrest the hand of crime.

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PART III—POLICE PREVENTION.

The machinery of prevention in modern society is the police system. The police should be furnished with the latest scientific appliances. In American cities, a policeman is supplied with signal boxes to call in the aid of others without leaving his beat. To insure against burglary, electric burglar alarms should be introduced as in America.

The function of prevention depends for its successful execution on the character, organisation and equipment of the police in any country. In India, the village police existed for centuries before the advent of Muhammadan and Christian conquerors. They kept watch at night, found out all arrivals and departures and reported all suspicious persons to the patel; since they collected their fees from the villagers in person, they knew the character of every man in the village; they traced the thieves up to the limits of the next village, the police of which thereafter became answerable for his detection. There was no general organisation of the several bodies of the village watch into a united corps. This kind of police survives at the present day and is entrusted with the function of detecting and arresting offenders about the villages. The co-operation of village officers is advancing now with increase of their enlightenment.

The police corps was organised in this country only during the last century on English lines. In Khandesh, Sir James Outram organised one with the members of the Bhil tribe about the year 1827, for guarding the Government Treasury and the Jail, for the escort of treasure and prisoners and for police work in general. But the extension of the system was by Sir Charles Napier who conquered Sind in 1843. He formed an efficient police force on the principles on which Peel's reforms were based in England. He placed it under the authority of an officer whose sole duty was to control and direct them subject to the chief civil officer of the district. The Police force consisted of 2,000 men well-armed, well-drilled and divided into three detachments, one for the towns and two for the country. The urban police consisted only of infantry, while the rural one included a detachment of cavalry as well. Originally these were engaged in battle with robbers and were very serviceable in detecting and putting an end to the crime of wife-killing which prevailed in Sind under frivolous pretexts. In 1853, the police of the Bombay Presidency was organised on Napier's lines under an European Superintendent subordinate to the District Magistrate. The system had already been extended to the Punjab in 1849. In 1855, it was extended to Madras. In 1860, the Government of India appointed a police commission as the

result of which in each Presidency an Inspector-General of Police was appointed for the general management of the police force and he dealt directly with the District Superintendents. The police force is proportionately smaller in this country than in England. The level of education and nourishment is also comparatively low. In England, it costs nearly £100 to maintain a police man per annum; whereas in India it costs only £12 per annum according to Sir Edmund C. Cox's calculation.

In India, the police staff consists of constables, head constables or sub-inspectors for police stations, sub-inspectors for taluks or areas of equal extent, inspectors for divisions which consist of two or more taluks, Assistant Superintendents and District Superintendents under the Inspector-General. The Collector is an appellate authority. In respect of departmental punishments, he co-operates with the District Superintendent. British India has been divided into about 235 districts for police purposes. The Inspector-General supervises the internal working of the police force and attends to the registration of crime. The District Superintendent attends to the recruiting of men, their training in law, drill and musketry and their general education in police head-quarters. He must make local enquiries of serious crimes and go on circuit to various police centres within the district.

The efficiency of the department depends mainly on the discipline, control and resourcefulness of the District Superintendent. Inspectors are mainly employed to see to the proper performance of their duties by all ranks of the police within their charges and they have to report any dereliction of duty to the Superintendent. For the local investigation of crimes, the Sub-Inspector of the taluk is mainly responsible. Recently, an office called Naik has been instituted in the Madras Presidency to render efficient assistance in collecting information about the commission of crimes and in detecting offenders. The Sub-Inspector's duties comprise prevention and detection of crime on the one hand and the discipline and behaviour of the police on the other. He must investigate as many cases as possible, and has to collect information regarding current events within his taluk, an intimate knowledge of the people within his jurisdiction being necessary for the detection of bad and suspected persons. In cases of grave crime, the Sub-Inspector must be present at the trial of the offenders in the Magistrate's Courts.

The police fall into two classes, the armed and the unarmed. The armed police guard the treasury and escort prisoners or treasure. In their case, educational qualification is not cared for and they have only a semi-military training.

The unarmed police are responsible for law, order and investigation within the limits of the police station where they do their duty. Two senior head constables are generally in charge within the limits of a station. The one is a station-house officer and the other acts as a prosecutor in cases and attends to the serving of summonses and warrants, and searches for bad characters within his jurisdiction. The police will have to watch the movements of wandering gangs by visiting villages and making enquiries. The patel or village headman keeps a police visit book in which the patrolling officer notes his arrival and departure. Although a police officer is not always in uniform, he is considered to be always on duty. The punishments for negligence in the discharge of duty are laid down in the Police Act V of 1861. They are mainly in the shape of fine not exceeding one month's pay, confinement to quarters for a term not exceeding fifteen days, deprivation of pay, removal from any office of distinction and refusal of special emoluments. The police catechism comprises a brief summary of important laws and regulations. There are heavy penalties for unwarranted interference with the liberty of a private citizen either by searching a house without reasonable cause or by offering personal violence to any person in their custody or by unnecessarily and vexatiously seizing property. This class of police are recruited from

the native subjects of the district aged between 18 and 25 and medically declared fit. The education and training of recruits take up several months. The constable is trained in drill and gymnasium, in practical work, in writing up diaries and reports of crimes and in taking thumb impressions. He is not sent to an outpost in country parts until he has at least a year's experience. Rising from ranks has become a thing of the past since Lord Curzon's time. Formerly, a constable had a chance to become a Sub-Inspector, but under the present law the Sub-Inspectors should be undergraduates at least and trained in a police training school like that at Vellore. They are finally appointed by the Inspector-General.

The character of the Indian Police force was not very satisfactory according to the report of the Police Commission instituted by Lord Curzon. Although Sir E. Cox does not countenance that view of them, he admits the superciliousness of the police officer. He says, 'There is far too much of the Jack in office type; it is less common to find one who will restrict his severity to those who need it and be civil and polite to decently behaved people. A little brief authority frequently upsets the mental balance of the half-educated police officer, especially in the mofussil. Too many natures in the police seem inclined to think that they are not public

servants but public masters and that in fact the public exist for the police and not the police for the public.' But he objects to the gross corruption attributed to the police, although admitting the use of concocted evidence in many cases and also the practice of beating or distressing the accused in excessive zeal to get offenders punished. Many a police man has got the foolish idea into his head that unless there is a beating, the truth will not be out. The police should bear in mind the maxims : 'never tell a lie when the truth will equally serve your purpose.' 'False in one is not false in all.' They should understand the characteristics of the people in making reports and in deposing to facts. Several ignorant men are incapable of appreciating the distinction between what they have seen with their own eyes and what they have heard with their ears. There is often a reluctance to admit ignorance, the tendency being for the most part to launch out into a series of imaginative details. Sir E. Cox says that although the evidence of the police is looked upon with the greatest suspicion, they hardly perjure themselves against an innocent person except when he has wounded the police man's pride or he has been guilty of several untried offences. To obviate the imputation of torture for confessions on the part of ever-zealous police officers, Sir E. Cox suggests that it must be made illegal to record the confession of any accused

person before he is actually put on his trial and that there should be no trial if there is no evidence other than the confession. It is not clear how far it is true that some of the prisoners accuse the police of torture by inflicting harm on themselves.

The police signally fail to get into the confidence of the people, because they are in many cases looked upon as enemies and oppressors rather than protectors of the public at large. Owing to this, they fail to note what is secretly going on for months and years behind their back especially with reference to the seditious plots of secret societies. Sometimes there seems to be a blank wall between the public and the police. Their failure is also partly due to their want of energy consequent on their under-feeding and over-work. The Police Commission Report of 1905 attributed the gross corruption and coarse treatment of the police to underpayment and assignment of duties which they are not qualified to perform. Police administration in England before Peel's days was very much the same as in India. However, the police force has been increased and improved since Lord Curzon's time.

The efficiency of the police depends on the character of the people from whom they are drawn and the characteristics of the people depend in turn on climatic conditions. The brain power of the brawny Hindustani is very limited, but he

seldom spends anything on drink. The natives of the United Provinces of Agra and Oudh are good guards and escorts, guilty of little neglect of duty. They are best fitted for the service of the armed police. If in hot climates people are weak and timid, criminals are also cowards. In Upper Sind, the police are reputed to be a fine race, owing to their activity being stimulated by the climate of the country.

The police officer should stay long enough in a place to know the nature of the people and their peculiar conditions. But if they stay too long, they might take sides in local disputes. Two or three years is a period tolerably long enough for the purpose. The behaviour of the police towards habitual offenders should not be too stringent. They should not act on the principle of 'once a thief always a thief' and run in even a person who has committed a trifling offence only once under the security sections of the Criminal Procedure Code. Whenever a man's name is struck out from the list of habituals, Sir E. Cox suggests that it should be done in the presence of the police constable lest the offender be troubled by the latter. The police is an overworked department, and their life must be enlivened with sports and other invigorating pastimes. Sir E. Cox's passage respecting the police service is very graphic. He says: 'I can see these men before me ill-paid, overworked both by

night and by day, of little or no education, oppressed with the knowledge that public opinion is prejuiced against them, and only too well aware of the pitfalls that await them in every direction but showing nevertheless by their bearing that they are determined to preserve their self-respect, perfectly disciplined, scrupulously neat and clean, the Muhammadans with well-grown beards, the Hindu carefully shaved, and all on the alert for the carrying of 'Present Arms' as one man, and all, as Lord Harris said 'with such nice faces.'

It will be interesting and instructive to note the contrast between the Indian Police system and the advanced systems of the West. In the West, the police problem varies from city to city and from time to time. Even there, the difference between the English and the Continental systems is very great. In Hyde Park, 200,000 men may assemble to discuss their grievances without menacing public order. This reflects the Anglo-Saxon temperament and habit of orderliness. In Hungary, such a meeting may blaze forth into a mutiny at the touch of the spark of some untoward rumour. When people can control themselves like the Anglo-Saxons, no great police force is required. While the English Police is individualistic, the German system is distinguished by its paternalistic feature. Orderliness is in Germany a social habit enforced

by the arm of authority. In Great Britain, the police are the servants of the community, because they generally possess no powers higher than any private citizen. The Continental police man is a servant of the Crown. He cannot be prosecuted for illegal action unless permission is obtained from the Government. He enjoys the privilege of special laws administered by special courts regulating the relations of public officials to private citizens. The difference between the English and the German procedure is best shown by the fact that while the accused must prove his innocence in Germany, his guilt is proved by the prosecution in England. In the former country, a distinction is made between arrest and detention, so that men may be taken to the police station, questioned and detained there even for twenty-four hours.

The humble position of the English constable has come down through a long course of history and is thoroughly woven into the common law; while, the constitutional struggles of the last hundred years in Germany and Austria have not completely altered the complexion of the police powers connected with the absolutism of the eighteenth century. While the enforcement of benevolent measures like factory legislation and public health laws is left largely in the hands of various National and Municipal Departments in England, it is left for the most part to

the regular police officials on the Continent. In England the police duties are mainly confined to the maintenance of order, pursuit of criminals and regulation of traffic, but almost all Government activities are on the Continent connected with the police; there are police detachments for insurance, mining, forest, fire, health, building, political and similar other purposes. The German police have also judicial functions in respect of minor infractions involving a penalty of not more than fourteen days. In Vienna such cases are tried by a Bureau, the head of which is often a trained lawyer or a graduate of the University. In Germany, the accused has no opportunity to explain his conduct, whereas he is allowed in Austria to make a statement and call witnesses in his defence.

While continental policemen are recruited from men with military training, the English policemen are taken from private citizens in country districts. In England, every recruit should possess elementary education and produce certificates of two responsible gentlemen who have known him for five years. In Berlin, service in the army for nine years is a qualification for the footing of a police constable. At Vienna, the military service is not a necessary qualification but preference is given to a corporal. Vienna affords the best training for police officers; the candidates must present certificates of character

covering a long period from their tenth birthday. In Berlin, applicants are required to file sworn statements showing the amount of their debts including payments of alimony. Candidates in London are recruited up to the age of twenty-seven, and on the continent applicants may be taken up to the thirty-fifth year.

The first training school for recruits was established in Paris in 1883, and then every other city provided some training for its police corps. In London, it is imparted for eight weeks, but in Paris and in Vienna, it continues for one year. The school at the last place has class rooms, dormitories, a museum, a library and a gymnasium, and meals are served in the school dining room. About 350 pupils are divided into 25 classes; each class is placed under a non-commissioned police officer and it is the class that is the working unit of the organisation. By classes the recruits eat and sleep and are taught to swim and row, to shoot and fence, and to use the Morse telegraph and appliances for aid to the injured, and they attend fires and riots as well. On the practical side, they are called upon to assist when some public celebration or parade or a riot or disturbance creates a difficult situation. For the first eight weeks the recruits are drilled in the practical duties of patrol, as well as the use of arms, and instructed in rudimentary legal matters. The school is regularly open from 8 to 11 in the

morning and 2 to 5 in the evening. Instruction is imparted through lectures and recitations; during the midday recess, the recruits are sent to various sections of the city with maps helping them to spot the various localities. At the end of this period, the recruits receive their uniform and serve as apprentices in the street to experienced policemen. After three months they are allowed to patrol alone. During the last six months of the year they are assigned to model precincts situate in the heart of the city. Every recruit is taught the Austrian Penal Code, Criminal Procedure and Police functions. He should read and write fluently in German. He is occasionally instructed in foreign languages. He is taught the mystery of bombs and explosives. He must understand poisons and antidotes and methods of identification. He should also be an expert telegrapher. At the end of the term he must pass a written examination in the subjects which he has studied. His whole life is one long period of instruction. In London the discipline is not so efficient as at Vienna. The Peel House is the best planned police school established in 1907. It provides eating and sleeping accommodations. The first two weeks are devoted to physical exercise according to the Swedish system. In the third week practical police work is begun and continues for the rest of the period.

The policeman is placed above want in all the countries of Europe. In London, the patrolman is paid a salary ranging from £336·96 to 436·80 per annum. Married constables live in well-furnished police barracks. Policemen throughout Europe are entitled to free medical service. In Rotterdam, their children in bad health may be sent to the seashore at the expense of the city. Although the police receive tips from the public for the services they render in special cases, corruption is very rare in Europe. The detective department is most elaborately organised in Germany and German laws confer upon the police extraordinary powers with which the English policemen are quite unacquainted. A German policeman on patrol is armed as if for war, and for detective purposes elaborate record files are carefully maintained. The German genius for arrangement and detail is nowhere shown to better advantage than in the preparation of these records and registers. The European Police are not required to enforce standards of conduct, which did not meet with the general public approval. Their integrity is brought to light by the custom of house-owners entrusting the keys of their houses to the police constable doing duty in the street where the dwellings are situate when they have to be absent for days from the town.

Advanced methods of police organisation are possible in this country only by the diffusion of

elementary and scientific education among the police at large and by keeping the members of the corps above want. The police department must be made to understand their relation to social problems. The police officer must be acquainted with modern ideas concerning the nature of the criminal, and the large and social problems in which he plays an ominous part. He must be trained to interpret crime in terms of its causes and deal with the criminal in a manner adopted to his make up. With a view to fight a world-war against crime, Guillar proposes the association of all nations for the arrest of criminals with uniform extradition treaties and a sort of international police, international criminal register and international identification bureau.

LECTURE X

PART I.—THE DOCTRINE OF RESPONSIBILITY.

This lecture treats of the fundamental principle that underlies criminal law and penal discipline, *viz.*, the Doctrine of Responsibility. The term 'responsibility' signifies a fitness for re-action. Re-action takes place in self-defence all over the world of Nature in order to avoid irritations of an injurious character. The re-action of the social organism against crime is called punishment. The history of repression tells us that it was developed from the law of private revenge. The primary aim of individual or communal response is self-protection. Modern criminology regards penal discipline as an instance of social defence. Whoever evokes the general constraint is said to be responsible to society. In this sense even the insane and the minors whom the State cares to protect are really responsible.

The reaction to any harm caused to any living being is reinforced by the instinct of pugnacity and hence it receives its strength from anger its characteristic feeling. Its nature and extent in the primitive stage are determined only

by the intensity of the individuals' indignation. With the growth of self-consciousness this passion mingles with a sense of injured self-feeling and the retort is motived by vengeful emotion. The defensive and the retributive reactions take place on two different planes of the individual's mental development. Mere self-defence may keep within the limits of necessity but if it is inspired by a spirit of vengeance it passes its bounds and itself provokes a further response. This is the starting point of private war between the aggrieved and the offending parties in society.

With the dawn of political union the individual re-action in excess of necessity came to be felt as a public disturbance and the community interefered to limit it to the needs of social defence and the ends of maintaining peace at large. With the development of national consciousness the State began to supplant the individual in securing him redress for injury. When it took a dispassionate view of the re-action necessary to injury of any kind, the idea of abstract justice suggested the law of equal retribution or retaliation signified by the formula 'an eye for an eye, a tooth for a tooth'. This rule of like for like was advocated by Moses and other Hebrew writers. It was only a deduction from the law of reparation based on the recuperative principle that what was lost must be regained. When public indignation inspired social

reaction at a later day, the idea of punishment superseded that of compensation and the vigour of penal law varied with the strength of communal disapprobation. When the worship of the gods for the safety and welfare of the community became established, wrongs to society were looked upon as sins against the titular divinities, and the remedy required was termed expiation. (This too had its root in social defence). The idea of wrong against God introduced the moral and religious factor in responsibility. When the juridical power slipped from the priest's grasp into the hands of the layman the same notion influenced the nature of the penalty to a certain extent. The retributive principle was not originally inherent in the idea of social defence but it coloured the penal systems which succeeded the scale of compensation. The incongruous combination of the objects of prevention and retribution as the basis of punishment led to inadequacies and contradictions in repressive methods.

The history of responsibility in a way marks the psychological advance of human society. Among the Romans responsibility was measured by the extent of injury resulting from an act or omission. Whoever violated an obligation to the state or the citizen as defined in their law incurred liability for the offence. Thus it was mainly objective and the offender had to

pay compensation in the coin of punishment irrespective of his mental status. There was, however, some distinction observed between a wilful and a negligent act. Practically, mere commission of an offence made one responsible for it. In ancient Hindu law, an act done with knowledge was differentiated from one done without it.

It was the Christian conception of responsibility for sins that drew attention in the West to the subjective side of the question. God is the seer of the inmost soul and judges men according to the purity or otherwise of their heart and hence, the motive of the individual had to be considered for fixing liability. The predominant Christian view was that God gave man freedom of will which he abused in the service of the devil. His moral fall was the consequence of his misuse of the divine gift. The opposite theory of predestination did not countenance this doctrine as it was based on texts like 'An evil tree always produceth bitter fruit.' The controversy between the exponents of both was originally confined to the field of Theology. However, in course of time, it invaded criminal law and the idea grew up that punishment should be directed only against a free act. Subsequently, intention was associated with liberty to act otherwise and the conception of responsibility came to be based on the theory of free will. Thus, the subjective side of the question was simplified into the consideration of the absence

or presence of intention with reference to an act and since it was presumed in all cases except where lack of it was apparent as in an insane person, the question of liability was practically as objective as before. No doubt punishments varied with the material circumstances of the commission of offences. Thus, in the Middle Ages, differences in responsibility were discussed only in relation to extraneous circumstances and not with respect to any influence on the will. In the eighteenth century, equality of treatment was emphasised in fighting against the arbitrary sentence of the judges of the time. Accordingly, the French Penal Code of 1793 did not allow any discretion to the judges in awarding punishments.

This classic theory of responsibility was espoused by Bentham in England and Feurbach in Germany. Although it was based upon freedom of will, it diverged from the Christian conception in that the latter paid attention to individual differences while the former, by espousing the doctrine of equal status for all men, ignored the subjective conditions of the accused and declared that all who committed the same offence were subject to the same punishment. This created difficulties in penal administration, for it "brought together in perilous, promiscuous association first offenders, habitual criminals, men blinded by sudden passion of the moment, thorough degenerates and chance criminals, etc. By providing

the same treatment for those who may claim attention and sympathy and for those who excite aversion, the application of the classical principle violated the common instincts of humanity and charity." Furthermore, it reduced the risk for the professional criminal as it gave him an idea of the disadvantages that may accrue to him from the commission of an offence. Punishment was regarded only as a kind of penal risk and the penal code based upon this theory became his true Magna Charta.

The conception of equality before law must be taken to mean equality of the degree of criminality, in estimating which, a number of considerations prevail, over and above the objective standpoint. Popular justice is in full accord with equity. The public conscience is not troubled, if punishment be adapted in daily life to the reformatory need of children committing faults in the course of their conduct. It sees in the light of its own age and judges of things accordingly. If it is enlightened enough to know that the offender was not a free agent, being afflicted with insanity, it will not be unrelenting in its demands. If conscience is regarded as the faculty which points to what is right, this power in every man is at the same time based on his knowledge and belief of things. Hence with the growth or modification of knowledge, it may qualify or enlarge its function. As criminality

varies with differences in the subjective conditions of the individual, the infliction of the same punishment on all persons is really unjust although the popular mind can at the outset more easily conceive of quantitative standards of justice.

On the subjective side, the classic theory assumed that wherever an act was willed there was also free choice. This confused volition with freedom. It was due to the fallacy that a possible state of affairs was mistaken for the actual condition of things. It may be probable that an individual feels free to do any act he desires, but when he begins it, the commission of the same is determined by a real and available motive. Potential freedom hardly supplies the decisive impulse.

The second assumption of the theory was that liberty existed to a like extent for all men with reference to the same act, for if it deferred from person to person, then the amount of responsibility also would vary and in consequence necessitate a divergence in penal treatment. But this was opposed to the doctrine of equality. Further, when the will is not associated with absolute freedom the position that it is affected by circumstances should be granted. As soon as some measure of modification is thus admitted, the door is open for all possible influences and this will lead to the admission of the extreme supposition of a complete determinism, so that the classical view of liability may

fall to the ground. Although it is the chief characteristic of legal construction to proceed by fictions and formulæ which may not be applicable to actual facts, penal law is the least amenable to such devices, because the issue here concerns itself with the very right to share in the social life. One should not be deprived of life, liberty or honour if one's conduct does not satisfy the requirements of meagre hypotheses.

The classical conception may be traced to the theory of social contract which was put forward to explain the origin of human society. According to this, each member of a community gave up so much of his freedom as was necessary for the maintenance of the State. As the amount of liberty surrendered was the same in the case of every individual, the abstract notion of justice was adopted in estimating one's responsibility. As the practical aim of the philosophers of the eighteenth century was to combat judicial extravagance, there was hereby a reversion to the purely objective side of liability. For the same reason, Beccaria says that punishment must be proportionate to the injury done to society and not depend on the intention of the offender. The administration of penal provisions based on this view was so unsatisfactory and unjust that there arose the necessity for the modification of the theory. This was done by the neo-classical school of Penology of which Rossi was a leading exponent.

With a view to bring law into line with the real facts of life, it was propounded that repression should be adjusted to the degree of freedom of the accused at the time when he committed the offence and that evidence should be permitted to be adduced for want of it. This idea was highly popular owing to the fact that it facilitated the consideration of reasons for absence or reduction of penal responsibility. The first application of it was made by the jury as it had to deal directly with the man in determining penalties rather than consider the nature of the act. Premeditation was held as a mark of excessive freedom, and the jury judged of acts according as they were deliberate or momentary. At law, the minors not having the capacity to know what is right and wrong, the insane who could not know the nature of their acts, and persons under similar disabilities were exempted from punishment. In the light of this theory, the French Penal Code was modified by the adoption of extenuating circumstances as grounds of mitigation or of non-imputability. The Italian Code of 1889 is the epitome of all the changes in Penal law advocated by this school. The question of moral freedom was also raised in the German, Austrian and other Codes, the framers of which were inspired by its teachings. Almost all the penal codes of the nineteenth century make a direct or indirect reference to partial responsibility.

This doctrine contains a scientific error and a practical difficulty. Admission of factors which influence the will gave a foothold for Determinism on its own ground. The practical difficulty was in finding a general standard of freedom. In this connexion what is freedom becomes the leading question. It has already been stated that it is not identical with will. If freedom be an intellectual process the intensity of thought in the shape of reflection should determine it. In many cases, premeditation renders "the will irresistible, blind, absorbing and all pervading and the obsession of the motive for crime becomes the more engrossing and the will becomes colder, more calculating, patient and contemplative than when it is absent." Rational considerations fail to counteract its influence. It is therefore evidence of the determination of the will by the tyranny of a fixed idea. The degree of intelligence and the strength of the will may be measures of freedom, but they are not freedom itself. Even consciousness of liberty is only that of a possible condition and does not amount to actual possession of it. Besides, consciousness may tell us that we act without compulsion, but it never says that we act without reason. We cannot detect a single case where a power independent of causes interposes and determines the issue of any act. It is through the influence of character upon our feelings that we are able to direct our actions.

Freedom pre-supposes the condition of a man in complete self-mastery. It comes to be realised as the control of the psychological personality upon character. Whether personality constitutes a cause in itself apart from the physiological mechanism which is its instrument is beyond the scope of empirical science. Spinoza said 'Men think themselves free inasmuch as they are conscious of their volitions and desires and never even dream in their ignorance of the causes which have disposed them so to wish and desire.' It is not easy to pry below the level of consciousness which is a surface part of personality and understand what elements of the subsoil determine the will. Turning to the practical side, freedom implies the power of our ultimate resistance or the strength of character to oppose the inherent passions and instincts which impel a man to crime. If volition represents the power to resist evil, there are numerous states of mind or brain or of the organism that permanently restrict its energy in various degrees. Apart from the biological influences, the social environment renders it null and void in the case of habitual or professional criminals, in whom the thought of opposition is itself deadened. There is no motive for the repression of the criminal intent on the part of the submerged who have nothing to lose by crime or by the penalties of the law.

Even in the case of a recidivist who was innocent once, his responsibility must be traced to a time when he began to commit his first crime. It is only the first offenders who feel the necessary hesitation and conflicts. If they should be restrained from lapsing into delinquency, it is they who should be punished with the maximum penalty that might be awarded according to the strength of their will when they first committed the offence. Even as regards these men, there is no definite criterion that can be followed at all times. Besides, in the interests of their progress and prospects in society they have to be acquitted or treated with much indulgence. An important fact to be noted from a practical point of view is that the question of lack of moral freedom required to determine responsibility is left in the hands of the jury and thereby an element of uncertainty is introduced into the decision of the question. The jurors act on their impression of the accused's criminality and they cannot all be made to employ definite tests of liability. Hence the futility of considering volition alone as the measure of culpability.

After the dawn of modern criminology, the neo-classical school has been superseded by the Positivists who uphold the theory of formidability that some motive or passion becomes the dominant influence and impresses the cerebral equilibrium to result in the commission of every offence.

Crime is an index of the formidable element in the criminal and since this is anti-social, society has to defend itself against its effect. Thus responsibility has been traced to its origin in self-defence. Hence Ferri says, 'The natural foundation and fundamental principle of the repression of crimes exists solely in the necessity for self-preservation which applies to every individual and every social organisation.' According to Saleilles, the determinists classify men into (1) those guilty of criminality but not of crime, (2) those guilty of crime but not of criminality, the first class including men who are congenital delinquents and the second class, pseudo-criminals who might have by chance or carelessness slipped into crime. The latter in spite of their liability necessitate little social re-action, while in the case of the former in whom signs of criminality may be foreseen, preventive re-action may have to be taken against them even before they committed any crime. It is objected that this idea does not accord with the popular notion of justice and implies a great restriction of individual liberty.

An intermediate position was therefore advocated by the third school in Italy under Carnevalle and Alemena, which emphasised the psychological effect of repression and sought to justify the retention of punishment for its traditional function of intimidation, and pointed to it as the basis of the

distinction between the treatment of the insane and that of the criminal. They are called the Historic School, because they purport to maintain the idea of justice that has grown up in the public mind in the course of its developmental history. These penologists overlook the fact that positivists have no objection to the influence of salutary fear being induced in the mind of the offender by any effective means in the interests of social defence, but if intimidation be made the basis of responsibility, it shuts the door to individualisation of treatment which is the end of criminal science.

Among a host of other theories, we may here consider the allied opinions of Tarde, Poletti and Saleilles. Tarde bases responsibility upon personal identity and social similarity. In order that the doer of an act injurious and contrary to the wish of others may feel that it is guilty and in order that judges and others may feel indignation, censure or scorn, two conditions are necessary: (1) the accused must attribute to himself the deed in question and not to organic or physical causes outside his person, (2) he must regard himself or be regarded that he forms part of the same society as the judges and the victim. This is probable only when there exists between him and the rest of the society a sufficient number of resemblances, chiefly moral and intellectual.

Irresponsibility arises through lack of personal identity when the accused does not act in his normal condition but as altered by a special state of mind. It occurs also through lack of social similarity when one group of men wars against another. Tarde is of opinion that in insanity there is a lack of both the elements. As regards the first of the two, it is never completely lost but fails at every step from the normal to the abnormal. For this reason it is not easy to answer whether the culprit was the same before as after the crime.

Poletti bases liability on normality which indicates the sum total of motives that regulate human conduct in society and are derived from religion, ethics and conventions. To remain unimpressed by these influences leads at first to an insensibility to such good incentives, and results in a gradual failure to understand them. Then there is a recognisable deviation from the common level. If conduct is cultivated by objects which are contrary to those experienced by other men it evokes a re-action. While absolute withdrawal from the normal condition implies irresponsibility, the intermediate slips from the general standard create different degrees of liability. According to this theory, the true criminal is not a responsible being and the criterion of normality does not really lie in the condition of the will.

Saleilles considers the question from the side of popular opinion and of ecclesiastical law. Though the sociological factors of responsibility are complex, the idea has a basis in some simple primal feelings which are part of one's own intimate and personal consciousness. The idea of a certain similarity of character arises in one out of a sub-conscious feeling of equality with the rest of the community. Any deviation from this standard implies the existence of a difference and the person swerving therefrom experiences a sort of social mal-adjustment which contravenes his sentiment of self-respect. This corresponds rather to a sense of shame than to an abstract conception. It is this emotion which leads to the realisation of a personal relapse by inducing a reflex picture of one-self in relation to society of which he is a part. This is the psychic root of responsibility. This Professor concludes that since men are governed and societies regulated through the ideal and the fictitious, the principle of freedom should be allowed to be identified with a feeling analogous to a sense of self-dignity and that the popular notion of liability should be adopted in criminal law save for penal administration. These theories merely explain the psychological origin of the feeling of responsibility and are of little value directly from the standpoint of social defence.

While thus the continental writers investigated the psychological basis of the doctrine, a practical view of the subject is found in books written by English writers. Dr. Mercier gives an objective definition of responsibility. In his opinion the term responsible means 'rightly liable to punishment', that is, punishable on grounds which appear fair and just to the understanding of the common man of a given country at a given time. He seems to favour the retributive side of the popular idea of justice. By giving it a moral foundation, he has opened the channel for the consideration of subjective states connected with the criminal act.

As conditions of liability for a harmful act Dr. Mercier says, 'The doer must will the act, intend the harm, desire primarily his own gratification; furthermore, the act must be unprovoked and the actor must know and appreciate the circumstances in which it is done.' The different states of the mind which affect the will or intention or desire cause a diminution of responsibility, and the disorder of these mental elements, inducing an incapacity to know the nature or wrongfulness of an act, eliminates it altogether. It is only when the change of personality is not recognised by the patient subject to it that he is immune from any kind of punishment. This author makes a detailed study of the various abnormal conditions that

cover the border line between normality and insanity.

Another English writer, Dr. Oppenheim, confines himself strictly to the legal side of the question. He has made a study of the responsibilities of lunatics as defined in the laws of various countries. His treatise is purely a juristic exposition of the matter and does not treat in the least of its social aspect which is vital to the science.

Dr. McConnell, an American author, has recently studied this side of the question in his book on 'Criminal Responsibility and Social Constraint.' He considers the various aims of punishment and arrays the arguments for and against each view. Then he elaborately goes into the question of freedom and the nature of law. With respect to responsibility, he brings out the contrast between moral considerations which have undue weight with the judges and social expediency, and records his opinion in favour of the latter.

Recapitulating the utility of the various theories in their effect on the practical development of penal law, the classical conception did much to put an end to arbitrariness in the application of punishment. Beccaria's views were mostly adopted in later legislation; he held that repression should supply the strongest preventives

to society with the least torment to the convict; he fought against extravagance in legal interpretation, and insisted that every man should be enabled to know when he is innocent and when he is guilty; the non-classical school paved the way for the introduction of extenuating circumstances and the Italian School insisted on individualisation of penal treatment.

PART II.—SOCIAL DEFENCE.

In view of the discussion in the foregoing part it is clear that from the standpoint of criminal science, responsibility is purely a social relation and individual activity can be limited only in a degree essential for social existence. Herbert Spencer said 'The living units do not and cannot lose their individuality, while the community by itself has no corporate consciousness.' Hence the welfare of the citizen should not be sacrificed for some supposed benefit of the State. However, in the course of social evolution, communal necessity has almost superseded individual needs, for 'the social process is primarily evolving in the individual, not the qualities which contribute to his own efficiency in conflict with his fellows, but such of them as contribute to society's efficiency in the conflict through which it is gradually rising towards a more organic type.' In this age of science, the acts for which every one should be held criminally liable should be such as are

regarded anti-social by all the nations of the civilised world. The great Italian jurist Garofalo proposes that there should be an international penal code, and a system of procedure and punishment similarly universal.

Acts required to be forbidden in particular countries should find a place in a code special to each ; punishment for them should not be serious, but may be in the form of fine or compulsory labour, unless it is needful to inspire in the offender a fear of the law by coercive measures. Lombroso is of opinion that acts not considered criminal by the people should not be held heinous in the eye of the law, as suicide, passionate crime, adultery, swearing, etc.

Turning to the Indian Penal Code, we find that most of the offences against person and property therein are of a grave nature that will justify their inclusion in a cosmopolitan code (though the punishments are out of date in many respects). However, there is need for much modification. Offences relating to coinage should be treated as of an economic character like those against property. The distinction between coin and Queen's coin may be abolished. Offences which are due to negligence may be relegated to the category of civil injuries just as those against trade and property marks. Where crimes against religion do not betray any defect of

character but only excess of enthusiasm, imprisonment may be avoided. In several cases where riots arise in matters of religion between Hindus and Muhammadans, or where ill-feeling crops up between different castes, the real grievances require civil remedies. There must therefore be a clear demarcation of the rights and privileges of various creeds in order that the members of one faith may not infringe upon the liberties of another. The manner of the commission of an offence should be considered only in so far as it may reveal the nature of the offender.

Law should follow public opinion in deciding whether a sexual wrong is an offence. A man having intercourse with his wife with her consent while she is below twelve is not ordinarily regarded as a rapist. If any bodily harm or injury to health has resulted, the duty of the husband to remedy the same may be enforced. In this connexion it is necessary to take note of the fact that in tropical countries like India, girls attain maturity at the age of even ten or eleven, and are married even earlier than that. It may be advisable to restrict early marriages in the interests of social health and economy. But to penalise an act which is incidental to the existing system may be impolitic, unpopular and even unjust. Social and economic causes of sexual delinquencies should be investigated and obviated by legislation as

far as may be. In the interests of individual members of society, the chapter in the Indian Penal Code on offences relating to marriage may be reduced to its limits as originally framed by Lord Macaulay. Whenever an offender reveals no unworthy motive or tendency to relapse, the payment of damages may be substituted for corporal punishment.

With respect to responsibility, the framers of the code were inspired by the ideas of the neo-classical school in more or less the same way in which those views influenced the composition of other codes of the last century. In these systems of penal law, an offence was not regarded 'as part of the delinquent's life, but as a juridical formula inscribed in a code.' Liability was based on the freedom of will in Continental Europe, and on intention and knowledge in English and Indian Criminal Law. Although this doctrine has been exploded by the theory of Determinism, liberty in the sense of absence of external restraint has to be ascertained in order that an act may be really attributed to the offender. It is not enough that an offence is physically traceable to some person ; there must be a causal connexion between the act and the mind of the culprit. Otherwise nothing can be inferred of his dangerousness to society. Hence constraint and other conditions like consent, ignorance, mistake and accident, which conceal the character of the

agent, must be taken into account in deciding material imputability. Similar grounds of exemption from liability under the code do not take us beyond the intention or knowledge of the accused. The fact necessary for ascertaining the nature of the criminal should become the subject of fresh provisions to be added to the substantive penal law or law of procedure of the future.

Even the degree of constraint that is needed to coerce the will of any person depends on his psychological character which may be the result of manifold conditions and causes, but to these the penal law of to-day pays little attention. In Indian law absence of premeditation is a ground of mitigation of the penalty for homicide, hurt and assault. It should be noted here that want of it does not imply absence of criminal character. Garofalo says : 'The character of the murderer does not depend on reflection more or less prolonged. The rapidity of the act has no relation to the corrigible or incorrigible nature of the agent. It is not incompatible with the most complete absence of the moral sense.'

Similarly, intention is not a perfect test of criminality. Even the insane have the intent to cause injury ; only they have no appreciation of the anti-social nature of their acts. Since knowledge is regarded as constructive intention, and 'reason to believe' is styled implied knowledge, there is practically no limit to the presumption

of intention from the mere commission of an act except under certain conditions like lunacy or infancy. In English law, it is sometimes necessary to prove a purpose, but in the code, motive is taken into consideration only in very rare cases. Sir James Stephen says with reference to the framers of the Indian Penal Code: 'Its authors have throughout been much imbued with the theory that neither the motive nor the result but the intention of the act ought to be the measure of its criminality.' The legal criterion of insanity as a ground of exemption adopted in English and Indian law is belied by pathological facts relating to it; liability therefore, should not be extended to acts done in apparently lucid intervals. According to criminal science, the insane are responsible to society in a sense quite different from that in which they are regarded so by the classical school. Knowledge itself is only one of the elements in the criterion and not the sole test of culpability for the reason that while knowledge is sufficient, volition may be too weak or too impulsive. Nor can the latter alone suffice, for, an individual with a very healthy will may commit crime on account of ignorance. Thus intention and knowledge are significant only in relation to the mental make up of the offender.

Apart from these, negligence may reveal the character of the criminal and the danger to

society arising therefrom. A careless offender, however, requires a different treatment from the wilful delinquent. But the definition of good faith in Indian criminal law subjects people to penalties which are never prescribed in England and other countries for want of care and caution.

Motive is recognised as a ground of exemption in the penal code, only when it relates to social advantage. But here it should be borne in mind that even the best of men when driven to risk of death are apt to commit crimes of a kind similar to the offence tried in R. V. Dudley, L. R. 14 Q. B. D. 273.

With reference to the limitations of the right of private defence in the code, it should be noted that a person may exceed it not with a guilty intention, but owing to fear or confusion induced by the circumstances of the case. If liability should depend on the dangerousness of the offender, the subjective criminality of an offence committed by overstepping the limits of self-defence may not reveal the real character of the criminal, because it may be obscured by the special circumstances of the case. This is why the German Criminal Code lays down the provision under section 53 of it as follows : ' Exceeding the limits of self-defence is not punishable if the perpetrator has so acted through confusion, fear or panic.' This provision may in the interests of the individual be added to our law.

Another principle suggested in the interests of the individual is taken from civil law. It is the limitation of prosecution after a certain length of time. No doubt this now obtains with reference to offences relating to trade-marks and property marks as they are in the nature of civil injuries. According to section 15 of the Merchandise Marks Act 1889, 'no prosecution for the said offences shall be commenced on the expiration of three years next after the commission of the offence or one year from the first discovery thereof by the prosecutor, whichever expiration first happens.' The application of a similar rule to other crimes is objected to on the ground that it prevents the law from catching hold of a professional thief a certain number of years after the commission of a known misdeed of his. But the reason for this suggestion is that 'people change with time, and to punish a person for an offence committed many years ago is not to punish the same individual that prepetrated it.' Hence, the rule of limitation should be made flexible so as to be applied whenever it is just and necessary. With the substitution of the personal criterion for the legal one, every legal principle should be made adaptable to the extent of social necessity. In certain cases, evidence of guilt comes to light after acquittal. Then a revision is proposed as a social remedy. But this is opposed to individual interests, since the possibility of a re-trial may keep people in constant danger

of a fresh prosecution. The evidence newly discovered may therefore be used against the offender on a subsequent relapse.

We shall now turn to the aspects of the commission of an offence. As regards liability for attempt, there are two theories, one subjective and the other objective. Attempt being partial commission, the intention to commit the crime is fully revealed therein. It is therefore equally punishable with commission. The French Code has adopted this view, but in practice the jury grants extenuating circumstances in the case of attempts. On the objective side, an attempt is not equal in gravity to the perpetration of the crime. Beccaria adopts the latter point of view on the ground that a difference between the punishments for both may induce the offender to desist from giving finality to the act. But it is very rarely that the culprit ceases to complete his deed after commencing to commit it. However, the public do not feel attempt to be so grave as commission. In the view of the scientist, 'attempt must be considered a criterion which is joined to that of determining the psychological motives and the anthropological category of the defendant.'

As regards the question of complicity, Beccaria is of the view that the penalty for principals and accomplices should be equal. The distinction between them is maintained in certain

continental countries on the ground that the principals must have greater daring than the accessories, and that greater daring implies deeper perversity. But the degree of criminality has often no relation to being either. The perpetrator may be a novice enticed by a professional criminal who plays the part of an abettor. In that case, the former may not be so guilty as the latter. Incorrigibles may be accomplices, and occasional criminals principals; hence, there can be no definite rule in respect of the penalty for complicity.

With reference to liability for plurality of crimes, there is maintained a distinction between repetition of a criminal act by a habitual offender before conviction and that by recidivists of the offence. This may be unnecessary. What is the good of punishing the recidivist with the same punishment which his relapse proves to have become futile in the first instance? Hence, in his case, a change in the mode of repression is necessary, rather than an enhancement of the penalty inflicted for the first offence.

Ignorance of law sometimes keeps unlettered men in the dark as to the social or legal gravity of several offences like forgery, fabrication of evidence, bigamy, etc. For aught we know, it is essential that in as much as criminal law affects a person in life, liberty, body and mind, a know-

ledge of it should be widely disseminated among the people governed by it. Otherwise there is no real force in the principle that no one should be held legally liable for an act not declared a crime by law before its commission. It was why Beccaria said, ' make the laws clear, simple and of such a nature that all the society that they govern will unite its forces to defend them, so that one will not see one part of the nation occupied in sapping them down to their foundations.'

For the sake of clearness, fine distinctions based upon the manner of violating the rights may be avoided, as they will become unimportant when punishment is determined by the nature of the offender ascertained according to the methods of criminal science. It is sufficient if it be shown what rights are violated and what crimes result in consequence. It is only when an act is on the border-line between the violation and non-violation of a right, that the manner of its commission should be considered in order to decide the criminality of the deed. There should be no difficulty in deciding whether an act is theft or not. When the personal criterion of the dangerousness of the criminal is substituted for the legal test of the social gravity of the offence, the provisions of substantive penal law will become very limited, though the scope of procedure may be widened; so that few can complain of the hardship of the rule that ignorance of law is no

excuse. The future penal code based on the principles of Criminology is likely to give the people a clear understanding of acts which are criminal, and hence it will itself be a preventive of delinquency.

LECTURE XI

OBJECTS & METHODS OF PUNISHMENT.

PART I—OBJECTS OF PUNISHMENT.

In this lecture we shall study the objects and methods of punishment. The idea of punishment had its origin in the vengeance of the injured individual or of his family against the offender. For instance, if in primitive society A stole B's property, B would strive to wrest it from A even by going the length of putting A's life to an end. This appears in modern law in the modified form of the right of private defence. Again, if A murdered B, B's family angered by the bereavement would wreak its vengeance not only on A but, if possible, on his family also. The re-action varied with the strength and indignation of the aggrieved party and was due to feelings of revenge and a desire for reparation. Although this mode of seeking redress was then considered just and lawful, it created serious disturbance to peaceful social life, and in order to avoid it, a graduated scale of compensation was substituted in its place. In this system, the graduation of the penalty was made according to the social rank of the victim. At that period, this arrangement satisfied the notion of justice, and punishment was thus assimilated to the status of a civil debt.

With the growth of communal consciousness, punishment reflected at the outset the strength of the social rage in its unusual severity; but in process of time, ideas of equality as of the essence of justice gave rise to the theory of retaliation, which has continued down to the present day in one form or another. The view of the great philosopher Kant is itself based on the principle that punishment must be equal and similar to the suffering caused. Dr. Mercier regards as a just measure of punishment the degree of retribution that commends itself as fair and equitable to the average member of the society. As he contends, there is no doubt that the feeling that the wrong doer shall suffer in proportion to the injury caused by him is as old as the foundation of Penal Law but how far the feeling represents true justice is a question to be discussed in the light of the conclusions of criminal science.

In some of the primitive societies, the idea of social re-action received its complexion from the notion of avenging the tribal gods whose ire was aroused by any social misdeed. Here punishment took the form of expiation which sometimes was so fashioned as to convey the lesson of determent to the public. Determent of the offender often took the form of outlawry or banishment. Sometimes, society sought protection from incorrigibles by abandoning them to the wind and the waves; then too the result was the same.

However, expiation and protection were subsidiary aims of punishment while retribution was its main object.

When the indignation of the aggrieved party was a measure of punishment, the offender's personality was hardly taken into account. He was more or less regarded in the position of an inanimate object. Punishment as the expression of blind revenge was even directed against things and lower animals. This is based upon the natural law that every animal (and we could extend the law even to vegetables) repels an attack by a defence which is itself a sort of answering shock. The expression of human revenge against inanimate things is most funnily illustrated by the incident [1] of a church-bell at La Rochelle, in the year 1865, which was whipped, buried and unearthed before it passed into the service of the Catholics. It is highly amusing to learn that to complete the farce of rebirth a lady of quality acted as midwife and another undertook to be the nurse thereof. 'They questioned it, they compelled it to speak, they made it promise that it would never return to the conventicle, and finally it was reconciled, baptised and bestowed upon the Church which bears the name of St. Bartholomew.' In ancient Greece, there appears to have been a custom of bringing to trial, trying, convicting and exiling any

1. George Ives, 'History of Penal Methods,' p. 252.

object which killed a citizen. In some societies of old, there was a rule that he who caused the death of a person must be delivered to the kinsmen of the deceased as something on which they might wreak their vengeance. In this sense, the sword used to kill a man with was forfeited to the king as a deodand.

As regards the punishment of animals, the Bible gives us good instances from the Hebrew Law. 'If it gore a man or a woman that they die, then an ox shall be surely stoned and its flesh shall not be eaten.' The Romans also had an idea that if an animal had done damage, either it should be surrenderd or the damage paid for. Among the Greeks, an animal might be prosecuted for murder and if found guilty put to death and thrown beyond the borders. In early Tutonic law, wergild had to be paid for an injury done by a domestic animal. What is more wonderful is that animals were frequently involved in accusations of witchcraft and sorcery. In the year 1474, a cock[1] (perhaps a hermophrodite) was accused and convicted of laying eggs which were supposed to possess magical qualities and was finally burnt. As the criminal law of man was applied to beasts, summonses were served on them by the officers of the court who read them at the places where the animals frequented or left them near their holes. Plenty of time was

1. George Ives' *Ibid*, p. 258.

given for appearance and able counsel were always assigned for their defence. Accused animals are said to have been put to the torture and their moans were taken to be admissions of guilt. We find a reference to it in Merchant of Venice Act IV, Scene I:

'Thy currish spirit
Governed a wolf who hang'd for human slaughter
Even from the gallows did its fell soul fleet.'

The brutal severity of ancient punishments is illustrated by the rule of law according to which the debtor's body was cut into pieces for distribution among his creditors. Instances of wreaking vengeance on dead bodies are not wanting. Maltreatment of the dead body has been common in savage communities all the world over. In the Bible it is said in Kings II that a monarch disinterred the bones of priests of another creed and therewith desecrated the rival altars. Most monstrous is the bringing to trial by Pope Stephen VI of the dead body of his predecessor. In England, the bones of Wycliff were dug up and burnt and the bodies of heretics were often disinterred and consigned to flames.

The various gradations of punishment in ancient law in proportion to the social gravity of crimes satisfied the object of prevention as well as of revenge. The severe penalties for

offences relating to coinage though palpably deterrent in their aim may be traced to the indignation of the sovereign for the violation of his prerogative. The penalty of forfeiture was a survival from the days of royal revenge. The English law of homicide, in that it pays more attention to the nature of the act than to the intention of the offender in cases of accidental death arising in the course of a delinquency, reflects the retributive instinct rather than any dictate of reason.

The true germ of modern penal law is found in Beccaria's book on 'Crimes and Punishments'. He fought against the irrational rigours of the system which prevailed before his time. Many of the principles which he embodied in his book have been adopted in the penal codes of the nineteenth century. Beccaria held up the safety of the society as the ideal that should determine the nature and extent of punishment. His theory savours of utilitarianism. Along with his contemporaries he was a strong exponent of the theory of social contract. He said, 'By justice I understand nothing more than the bond which is necessary to keep the interests of individuals united and all punishments which exceed the necessity of preserving this bond are in their nature unjust.'

The Penal Codes which saw the light of day before the birth of Criminal Science never

aimed at anything higher than deterrence and the punishments though purporting to be regulated by the social gravity of the offence had their true basis in retribution. Still, the avowed object of modern penal legislation was prevention rather than retribution which might at best have had only a vague basis in the subconscious feeling of the law-maker. The purpose of punishment was expressed by the framers of the German Penal Law in the following manner even as early as the beginning of the nineteenth century :—'It is our intention as the paternal head of the State to secure to our faithful subjects the quiet possession of their property, to set up deterrent examples, to prevent stealing and robbing, to correct criminals where possible, and, if they are incorrigible, to render them innocuous to their fellow-citizens.'[1] The deterrent effect of punishment is viewed in two ways, as deterring the public and as deterring the culprit. The former is called general prevention and the latter a special one. The effect of general prevention, although obscured by manifold counteracting influences which tempt the criminal to ways of delinquency, is noticeable on the negative side. In the words of Aschaffenburg, 'The stamping of an act as an offence, the commission of which the State will prosecute with unrelenting severity, immediately, arouses a feeling that the act is unsuitable, inadmissible

1. Aschaffenburg, p. 259, 260.

disreputable and contrary to duty. General prevention operates very slowly, intensifies the general feeling of right and wrong and is rather educative than directly deterrent.'[1]

As regards special prevention, its failure is indicated by recidivism. The habitual criminal becomes familiarised with the severity and horror of penalties, which at the same time ruinously tell against the comparatively innocent and the harmless. The better mode of special prevention therefore is to reform the criminal by supplying the defects of his education and position. If efforts in that direction fail, defects in legislation in respect of substantive and processual law should be remedied.

The idea of aiming at the reform of the criminal as part of the tutelary function of the State is quite modern and was first voiced by Karl Roder (1806-1879) even before the birth of modern Criminology. Failing reform, the principle of segregation has been advocated for incorrigibles; while, a few like Garofalo have emphasised against them the policy of elimination. Briefly put, the object of punishment to-day is that the State should mend or end the criminal. It is the school of reform that holds sway at present.

There is another school of Penology called the Radical School which is inspired by the

1. Aschaffenburg, p. 262.

extreme of humanitarianism. It denounces all kinds of reaction against criminals except oral persuasion and the strengthening of the public sentiment against them. Count Tolstoi's motto was 'Resist no evil by evil.' The coercive reform of the criminal is regarded as a hindrance to his freedom which is a great corrective of moral perversion. This school holds that the object of reformation is best furthered by giving free play to the spontaneous repressive effects of the natural consequences to which the offender is exposed through his crime. However, some of the radicals admit that punishment is a part of the tutelary function of the State. Hence, every criminal is according to them a deficient being entitled to the right of punishment at the hands of the Government. Solveiff, another champion of this school, treats of the penal question from the ethical standpoint. His view is that the moral indignation excited by crime turns into pity for the criminal to the same extent to which it extends to the victim; for, every offence is the issue of a moral injury and indicates a pathetic fall of human dignity which evokes brotherly treatment in consequence. This reminds us of the instructive verse in the Tamil ethical poem Naladiyar, that besides putting up with insults, the great feel pity that the slanderer will reap the fruit of his sin in fiery hell. On the radical principle, Vargha attacks the criminal judiciary as resting on the principle of vengeance

of various degrees. He classifies the attitudes of the criminal judiciary in various ages of history in the following manner[1]: (1) Unlimited vengeance, (2) Limited vengeance represented by the law of retaliation, (3) Limited vengeance as a moral compensation, (4) Safety without respect for the personality of the delinquent and (5) Safety with respect for the personality of the delinquent. In short, the Radical School aims at an ideal which can hardly be translated into practice in human society as it is constituted to-day and its adherents are only a few idealists.

Each of the various objects of punishment has had its utility for the purpose of social defence. To such of the criminals as are of a religious cast of mind, expiation is a term which may reconcile them to a penalty. According to Maine, Retribution serves as a kind of safety-valve for the indignation of the community; and Mill in his examination of Sir William Hamilton's Philosophy makes the most of Retribution as a penal object. He says, 'It can alone produce the associations which make the conduct that incurs it, ultimately hateful in itself, and which by rendering that which is injurious to society, similarly distasteful to its individual members, produce the fellow-ship of feeling which gives them a sense of common interest and enables

1. De Quiros's Modern Theories of Criminality, p. 135.

them to sympathise and co-operate as creatures of one kind.' The ends of deterrence and reformation are only part and parcel of the general ends of social defence.

In old Hindu law, the aims of punishment were declared to be deterrent, corrective and protective. In Manu, we find the verses: 'The genius of punishment is the protector of all created things.' 'Through fear of that genius all sentient beings are fitted for natural enjoyments and swerve not from duty.' 'When rightly and considerately inflicted, it makes all the people happy, but if inflicted without full consideration, it wholly destroys them all'. Criminal justice is declared to be superior to the king. 'Criminal justice eradicates a king who swerves from duty together with all his race.' That the just and proper adjustment of punishment is a problem was recognised in the days of Manu. 'By a king wholly pure, faithful to his promise, observant of his scriptures, with good assistants and sound understanding may punishment be justly inflicted.' The reformatory idea of punishment inspires the verse: 'Men who have committed offences, and have received from kings the punishment due to them go pure to heaven and become as clear as those who have done well.'

All these ideas converge towards the grand modern object of Social Defence as the supreme end of penal science.

PART II—METHODS OF PUNISHMENT.

We have in a way dealt with the diverse purposes of punishment and now we shall consider the nature and history of the various penal methods. Ancient punishments were cruel and inhuman. They betrayed only the savage character of social indignation. Mutilation leading to death was a common feature of primitive penalties. The history of excruciating punishments in various countries sends a thrill of horror through our nerves and depresses us with the depth of brutality to which man has descended in the past to afflict beings of his own kind. The offender was treated on the footing of stocks and stones. In their turn stocks and stones were treated like men. In the reign of Æthelstan, man should forfeit his hands for coining and have it nailed over the door of the mint. In the reign of Canute, a woman might lose her nose and ears if she committed adultery. As regards a habitual criminal, the following passage may be noted: 'At the second time there be no other bot if he be foul, than that his hands be cut off or his feet or both according as the deed may be and if then he have wrought yet greater wrong, then let his eyes be put out or his nose and his ears and the upper lip be cut off, or let him be scalped.' Superfluous it is to refer to the horrible penalties prescribed in Roman law for serious offences against the family.

In the laws of Manu, the subjective side is also taken into account in fixing liability and the caste of the offender affects his punishment. Manu sets out four methods of punishment, *viz.*, gentle admonition, harsh reproof, deprivation of property and the infliction of corporal penalty. The last was remarkable for its severity. One evil of Manu's Code was that the lower the status the severer was the penalty. For instance, 'A once-born man who insults the twice-born with gross invectives ought to have his tongue slit; should he through pride give instruction to priests concerning their duty, let the king order some hot oil to be dropped into his mouth and his ears.' Some of the penalties were grimly poetic. 'He who raises his hand or a staff against another shall have his hand cut and he who kicks another in wrath shall have an incision made in his foot.' 'A man of the lowest class who shall insolently place himself on the same seat with one of the highest shall either be banished with a mark on his underparts or the king shall cause a gash to be made on his buttock.' While these horrors represent one phase of the matter, it redounds to the great credit of the religious spirit that pervaded every Indian institution that elaborate expiations for sins have been laid down by Tantric ordinances and most of them represent the best psychological treatment on the lines of modern individualisation.

With the advance of civilisation the severity of ancient penal methods was reduced to a minimum and imprisonment became the essential mode of penalising the offender. In the eighteenth century the dignity of man was thrown into relief by the writers of the French Revolution and the cause of individual liberty was fought to the bitter end.

Concomitant with it arose the attack on the treatment of criminals. Beccaria raised a strong voice of protest against the use of torture to extort confessions. 'It runs counter to the principle that no man can be judged a criminal until he be found guilty. If he be guilty he must suffer the punishment ordained by the laws. If he is not guilty the innocent is tortured.' He advocated short sentences, lenient treatment in prisons and immediate infliction of punishment. The degree of the punishment and the consequences of a crime ought to be so contrived as to have the greatest possible effect on others with the least possible pain to the delinquent.' He has devised various kinds of penalties for different classes of offences. For robbery the poor should not be deprived of their property but must be made to work and pay any fine that might be levied. Robbery with violence might be punished with corporal punishment. Injuries which affect the honour of men must be punished with infamy. Punishment should be certain rather than severe.

To be brief, Beccaria's rules of redress are based on the principle of like to like so far as social necessity permits. Now let us consider the nature of the various kinds of punishment which find a place in modern penal law.

The first and foremost of them is capital punishment. There is a conflict of opinion as regards the advisability of retaining it. This is the most ancient and typical of all the penalties. In primitive societies the sanction for most of the offences was death ; for the shortest and swiftest way of avoiding an enemy was to kill him. In a savage community which had to wage wars as a condition of its existence, life was held very cheap and loss of it was valued in terms of money payment. Mere death being an ordinary penalty, torture was employed to aggravate it. Even otherwise mutilations that were prescribed were often mortal. Religious fanaticism led to the cruel burning of men in European countries and as late as 1530 an Act was passed by Henry VIII to the effect that prisoners should be boiled alive. In the prisons of old many perished of hunger and thirst. The number of capital offences was as many as two hundred.

The death penalty when dictated by necessity has been advocated by a host of eminent writers. Plato says, ' When a man is never innocent but in sleep it is better that he should die than live,'

Galen and Seneca advised the use of capital punishment for the elimination of dangerous incorrigibles. Some writers like Hackel regarded it as a process of artificial selection. Professor Ferri says that corresponding to natural selection there should be a social selection. The sternest advocate of this punishment in modern times is Raffelle Garofalo who looks upon elimination of criminals as a kind of moral war for the good of society and holds that such a process will not evoke popular sympathy in favour of born criminals who belong to a different category of beings. Lombroso steers a middle course by holding that capital punishment must be held up as a threat to habituals and incorrigibles. Aschaffenburg is of the view that from the standpoint of security it is justifiable and that repulsiveness of execution could be done away with by changing its method. George Ives is of opinion that hopeless people should be painlessly removed rather than that the State should be put to expenses for the thankless task of maintaining them. In short the arguments of the exponents of capital punishment is: 'If there are born criminals or habitual recidivists whose nature is or has become to kill, rob and commit rape, it is better to make an end of these ourang-outangs than let them live in abject misery in a distant isle.' What means of defence is left to society against a man guilty of repeated murders who keeps his guard in constant danger of violence or death? The opponents of

it say that even if the existence of society be endangered by the mere presence of an offender a penalty similar to that meted out to Napolean may be quite sufficient to avert the calamity.

Although capital punishment has earned many advocates since the days of its origin modern tendency since the time of Beccaria has been to do away with it or reduce it to the limits of indispensable necessity.

Beccaria denounces it on the ground that the State has no right to take the life of an individual because it was not surrendered as part of the consideration for the social contract on which Government was based according to his view. He regards the punishment of death as a war of the whole nation against a citizen whose destruction they consider necessary or useful to the general good. Hence he permits the use of this penalty only when there is imminent fear of the loss of liberty of the State. Copinger is a strong English opponent of capital punishment.

Another reason against this penalty is that the fear of death is not so deterrent as the continued example of man deprived of his liberty for life and is not potent enough to overcome the forgetfulness natural to mankind and incidental to the wild passion which plays the tyrant in the criminal's breast? Bacon said with reference to death 'Revenge triumphs over it, love slighteth

it, honour aspireth to it and grief fleeth to it and fear pre-occupieth it.' As Mr. Davitt puts it 'the really hardened criminal will scarcely commit murder.' It is generally brought about by the tyranny of emotion, or epilepsy, or insanity. That capital punishment is not a deterrent is based on the truth that 'the great control of our propensities to transgression is not in the law but in the whole system of moral powers and restraints, whatever they may be, which bind society together and that, if they indeed had to wage war with the passions let loose, the utmost human power would at once be swept away and that the power of punishment is but a part of the system to which it bears a very small proportion.'

Besides, superstition makes a hero of assassins; murders excite the admiration and pity of the weak-minded. Many of the criminals look upon death with courage and make light of it through vanity. Even the feebleminded have a desire for notoriety. The execution of a criminal is to the multitude a spectacle which excites compassion mingled with indignation. These emotions influence the public mind more potently than the salutary terror which the laws endeavour to inspire. The popular opinion of the punishment one may read in the indignant and contemptuous look of every man on the executioner who is after all an innocent executor of the public

will. Ferri says that two executions in France which he had occasion to note produced on the populace an effect quite the contrary of what was hoped for and that the multitude felt a curious pleasure in the unusual sensation incidental thereto. The fame of a sensational execution has often a baneful effect upon psychopathic individuals.

As one great writer said, 'Till the passing of the sentence our sympathy is with the victim but after the prisoner is condemned the convict becomes the object of pity.' Life-long slavery as a substitute for capital punishment is not likely to turn public sympathy in favour of the convict. It has at the same time in it all that is necessary to deter the most hardened of criminals as effectively as the penalty of death. Beccaria says that the punishment of slavery is more terrible to the spectator than to the sufferer himself. Further, fanaticism and vanity forsake the criminal in slavery who is in the long run broken in to do regular work which may be turned to the advantage of society. In Christian countries religion by insisting on the importance of penitence and prayer at the last scene serves to diminish the horror of execution. 'Religion appears to promise him almost a certainty of eternal happiness upon the easy terms of repentance and contributes much to lessen the horror of the last scene of the tragedy.'

The barbarity of capital punishment has a demoralising effect upon society. To return injury is no less an evil than to inflict one. Beccaria asks 'It is not absurd that the laws which detect and punish homicide should in order to prevent murder publicly commit murder themselves?' His view is that if laws are intended to moderate the ferocity of mankind they should not increase it by examples of barbarity. Prescription is no guarantee for the need of this penalty and cannot prevail against truth. Progress in Penology is nothing but the adjustment of penalties to the conditions and requirements of the age. 'The history of mankind is an immense sea of errors in which here and there obscure truths may be detected and availed of.' Death penalty was almost the only means of punishment when there were no asylums or penitentiaries or other means of social defence and when the idea of reform of the criminal was little dreamt of by society. However, history tells us that Sabacca, a king of Egypt, commuted all capital punishments into severe tasks which were most profitable to the kingdom and found that his step was most successful. In the days of the Roman Republic the Lex Porcia exempted all citizens from sentences of death. Valerian laws prohibited the use of violent papal methods against a citizen. In modern times Tuscany is instanced by Copinger as the province where during the period when capital

punishment was set at abeyance there were fewer offences than after its re-establishment. This shows that in a civilised society the infliction of death on a fellow-creature is felt to be contrary to the natural feelings of humanity. Although murder is a most grievous and irrevocable deed it does not follow that every murderer is the worst kind of criminal. If it is committed even by decent people under the influence of passion, capital punishment affords no room for reform or repentance.

In answer to the plea that the death penalty is sanctioned by religion we may point to Schlegel's statement that in ancient and mediæval times the current opinion was that Christians could not bear a part in the execution of criminals. For instance, the ecclesiastical courts never directly inflicted the punishment of death except through the secular tribunal, at least in England. Hence religious usage has been in a sense really against this kind of penalty.

Capital punishment may tend to increase crimes of violence. At the trials of capital offences the jury exercise their power of acquittal in all the necessary cases and if the prisoner is sentenced to death there is a fresh right of appeal in England to the Home Secretary and in India to the Governor-General in Council. As already observed the sympathy of the public being with the victim after conviction, the friends and

neighbours of the convict petition the Government on his behalf. Hence there is a double trial so as to facilitate the escape of the offender. Besides, the prospect of execution makes some persons desperate and unwarranted in their behaviour.

From the standpoint of procedure, Bentham adduces an argument against this penal method. He says,[1] 'There is an evil resulting from the employment of death as a punishment; it destroys one source of testimonial proof. Whilst a criminal process is going forward the accomplices of the accused flee and hide themselves; when the accused's career terminates, it is for them an act of jubilee and pardon as the archives of crime lodged in the bosom of the deceased are once for all buried.'

The irremissibility of capital punishment is the strongest argument against it. Many a crime is shrouded in mystery and while its real authors are safe in hiding, the innocent may chance to be victimised by the hand of the law.

This penalty has been abolished in Switzerland, Holland, Portugal and several States in America. In the Indian Penal Code it is made compulsory wherever there is recidivism of the offence of murder and also when a person under sentence of transportation for life commits it. Thus it may apply even to a person who is guilty

1. Copinger 'Abolition of Capital Punishments,' p. 61.

of murder for the first time when he has been deported for any of the several offences (other than culpable homicide), for which transportation is prescribed as a punishment. Death may also be inflicted for an attempt to commit murder by a transported convict. In practice, it is imposed only when there are no extenuating circumstances and the commission of the offence is deliberately violent.

In prescribing capital punishment as one of the penalties for perjury leading to the execution of innocent persons, the Indian Penal Code has surpassed the criminal law of England and attributes no weight to the independent judgment of the jury and the judge, and the evidence of other witnesses, as factors in the framing of the sentence. Furthermore, in including under Ss. 194 and 195 I. P. C. offences capital by the law of England in the class of crimes at the trial of which the giving of false evidence proves fatal to the accused, it has superseded English Law itself on that head in India. So far as this country is concerned, transportation is the best medicine for deliberate murder and the Indian penal system is well adapted to the correction of the offenders.

Modern opinion connives at capital punishment only in the last resort in cases of incurable recidivism. But an advance in psychological knowledge may sooner or later enable us to realise that it is never too late to mend. Can

society not utilize incorrigibles as inanimate things of force at least for the encompassing of risky works? While criminals are men, will not the latest scientific treatment that mesmerises wild beasts be useful in reforming culprits in fulness of time?

Next in importance as a method of elimination ranks the time-honoured penalty of deportation. It had its origin in outlawry and ex-communication. Serious offenders excited social indignation in such a degree that they were put out of the pale of society and of law. Primitive men went the length of abandoning the criminal to the mercy of the wind and the waves. In England, outlawry was a common punishment in ancient days, and the forests were for long the favourite haunts of outlaws. Their property was confiscated and their dwellings burnt down, and on their lands salt was scattered to render them unproductive: 'The gardens were extirpated, the woods eradicated and the meadows ploughed up.' Dangerous criminals who got through the ordeal of fire or water had to abjure the kingdom within a fixed time. Those who took sanctuary under the protection of the Church were also once required to leave the country.

Deportation was absolute or relative. In 1190, King Richard ordained that if any man on board the ships committed murder, he should be bound to

the victim's body and thrown overboard. Captain Arthur Phillips who was appointed in 1786 to lead an expedition of convicts to the penal settlement in Australia proposed that if any of the people under his charge were convicted of murder or any other offence, they would be kept bound and consigned to cannibals for meat. These are instances of absolute deportation.

An example of relative deportation was furnished by the practice of condemning the convicts to hard labour as galley slaves. This was offered as an alternative to the death penalty. There was a Tudor statute that prisoners might be reprieved from execution and sent to the galleys with a view to temper justice by clemency. The tortures of galley life varied with the whims and fancies of various masters. With the discovery of the new world in 1597, was passed a measure sanctioning transportation to the West Indies of such 'rogues, vagabonds and beggars as are amenable to reform'. In those times, the English Government granted pardon to convicts on condition of their leaving to the West Indies, but they violated the conditions as often as they could. There was also a demand for labour in that place and the contractors of workmen were given rights of property in the service of the convicts. In 1747, an Act was passed forbidding deported rebels from coming home without a special license on pain of death. The war

between the colonies and the mother country closed the door upon transportation to America in 1779. In 1788, a penal settlement was established in Australia. The difference between convicts transported to the East and those deported to the West was that while the latter became slaves of Europeans, the former represented the free population subject to their enemies, the Government officials. A number of them were always engaged in working for the Government. In 1791, lands were allotted to prisoners who had served their term, the usual extent being 30 acres for a single man and 50 for a married couple. Many of them were bestowed on settlers for service on their farms; they were allowed to send for their wives and children from home to come and live with them. The impression was that most of the criminals were really reclaimed through the new life that transportation afforded them. It is interesting to note that several of these men won such reputation that they were placed on the Magisterial Bench. Only such of them as belonged to the unemployable class relapsed into crime, and those who fell into the hands of bad masters found a place in the chained gangs of penal settlements.

When free emigrants poured into Australia, there began a violent agitation against deportation of convicts. In consequence, in the year 1840, Van Dieman's land was made the English penal

settlement. Here the probation system was in force whereby the prisoners were trained to assimilate themselves to the responsible life of citizens. Severe imprisonment, outdoor labour, a slight amount of freedom, a wider range with tickets of leave, conditional pardon and restoration of liberty were the successive steps of this reformatory discipline. Owing to the crowding of inmates, transportation to the island was stopped in 1847 and at the same time began the construction of fresh prisons in England. An Act of 1857 did away with it finally and substituted penal servitude in its place.

Deportation to a distant isle from where no influence is likely to reach the mother country is viewed as the best form of punishment for those who should for the sake of peace be segregated from society; at one end of the scale, there is the hardened incorrigible and at the other, the political criminal. Though expensive, it is sure to cost less than new crimes and new trials, especially in the light of the fact that the work of the deported may be turned to the advantage of the State. Two things should be taken into account in making it successful, *viz.* (1) shutting out all loopholes for escape is necessary as in the case of the Indian Penal Settlement at Port Blair. Even in the Andamans incorrigibles were confined in an isle called the Viper island and kept under the watch of a strong corps. (2) The

convicts should be made useful enough, at least to save or reduce the State expenses of maintaining them. Prisoners who come from rural parts may be employed in farm work and those from the city in workshops. Roads may be made and marshes may be drained. Men who show a decided reform may be conditionally set at liberty. Relapses should be penalised with cellular confinement and refusal to work may be punished with starvation or poor diet.

While hardened criminals may be put to the severest tasks, the enlightened political criminal should be treated with the least severity that is needed. The exile of this class of offenders is as old as the beginning of civilisation. It prevailed in Rome and in Greece under the name of Ostracism; in Scicily it was known as Petalism. At the present day in the United States the penalty for political crimes is fixed by the Congress as was the case with the Roman Republic of old.

In this country transportation for seven years or for life is one of the usual punishments for all serious offences. Of all the people in the world it is Hindus who have least stirred out of their country for foreign shores. Crossing the sea was looked upon as a violation of the fundamental rules of caste, although this is a view which has descended from decadant times, in

view of the historical fact that shipping flourished best in ancient India. Further, to marry and have children is in the eye of the Shastras payment of a debt to the manes of the ancestors. This debt could not be paid by the deported, and it added to the untold dread of this sanction among classes whose life was inextricably bound up with traditional beliefs. Hence the most crafty attempts in the past at escape of the Indian convict in the Penal Settlement. Although at the present day this fear is almost vanishing, what George Ives attributes to the English convicts of the eighteenth century in Australia applied with much force to the Hindu prisoner of a generation back. "The distance that lay between them and their unexplored destination which thenceforth would sever every human bond of love and memory must have appeared almost as far and final as that unknown gulf of space and darkness which yawns beyond the limits of the grave."

There are two conflicting views on the advisability of deportation. The French School of Sociology lays great stress on the curative importance of a change of surroundings. Their motto is 'Change the environment and the criminal disappears,' for it implies a change of climate and soil which is conducive to rest, nutrition and moral recuperation. Besides, the absence of the evil associations in home environment goes a

great way to better the habits and temper of the convicts and their labour is likely to achieve wonderful results in the penal settlements. The convict colonies, they say, recall to mind Plato's 'longed-for spots for moral welfare placed under the influence of a beneficent spirit, with springs of psychological value', and it is their opinion that American colonies and ancient Rome itself owed their origin to a kind of penal immigration. The other side of the question is represented by Lombroso, who starts with the idea that the environment in a new country is bad being subject to vicissitudes of climate and likely to bring the convicts into contact with savages. As regards their work, he raises the sentimental objection that they should not be made by law the slaves of a favoured class, and denies that successful colonies owed their prosperity to the labours of delinquents. In short, he holds that deportation can hardly improve the recidivist or the born criminal, but admits the advantages of a change in the case of occasional offenders and criminals by passion. Aschaffenburg holds the same view and advocates the utilisation of criminals' energies in work at home where it may be less costly and more easy to manage.

With the stoppage of deportation to colonies, penal servitude became the rule for serious offences in England. In the fifties of the last century, the necessity of providing for more than

8,000 prisoners in floating prisons and elsewhere led to the erection of special jails designed to carry out the latest methods of punishment. By the Penal Servitude Act of 1857, three years were ruled to be the minimum period of detention and the new system consisted of three stages: (1) confinement in a cell for a year which was subsequently reduced to nine months, (2) associated labour on the public works and (3) conditional release on ticket of leave. The convict's term was reduced for hard work and good conduct by one-fourth of the period spent in associated labour, and women could get a reduction of term, by a third of the period of the whole sentence. Life sentences were then considered as terminating at the end of twelve years. Solitary confinement was too hard to bear and the prisoner's work was done under the spirit of fear and not of progress. The convicts were clad and fed so ill that at Dartmoor the practice of eating candles became very common. Till about the dawn of this century no real reform was effected in English prisons.

The details of penal treatment lead us to the consideration of corporal punishment. It mainly signifies flogging, torture or mutilation. We shall now deal with the first of which the accused is likely to be in constant fear, since it can be inflicted at any time even without the help of a tool. It is the earliest of all the penal measures

and prevails even in animal society inasmuch as some creatures like the lion beat their foe with the tail or with the paw. Beating is the immediate reaction to any kind of injury, and of all the limbs, it is the hand that first stretches forth to avert danger. With the development of the head, the hand sought the aid of a rod or a whip to multiply its force. Various forms of these instruments have been developed by the fiendish ingenuity of the penalising authority. Historically 'there must have been as many appliances for lashing the unfortunate human body as there were cutting weapons to make holes or stabs in it.' The superstitious belief ruled the primitive mind that the souls of the dead might be beaten, hurt and driven like any other living creature and they could be affected through the body of the patient. Among the savages, disease and insanity were considered as personal entities capable of being driven out with the rattan. Among Christians of the Middle Ages, the devil was thought to be the cause of sin, lunacy and illness, and flogging was employed to subdue the ravings of mad men and curiously, sometimes, as a sort of relief to the keeper's feelings. Among the Spartans, thrashing was used as a test of strength. Every Spartan youth had his share of it at the altar of Artemis. Among the Romans, it was inflicted with the flagellum, a three-thonged whip with bone or brass knots fastened to it.

Ancient society with its invidious clannish distinctions was cruel to lower classes. In Anglo-Saxon times, a slave was given the option of paying compensation or of having a leg fastened to a stake round which he was flogged with a three-thonged whip. In modern times when transportation was the order of the day, striking with the 'cat' was employed as a universal remedy for the delinquencies of convict servants. In the words of George Ives in respect of the state of things in England of the 17th and 18th centuries, 'children were beaten at home; boys were flogged and birched in schools; servants were thrashed in the country districts; and prisoners in the jail, both men and women, were publicly whipped till 1817 and all the disciplined men of the fighting forces were knocked about until their skin became red or blue as their jackets, and sometimes even mammocked to death.' The 'cat' was made up of several lashes or tails, so-called because it was like the animal of that name said to scratch the back of its victim. The number of stripes was also unlimited in the case of convicts who were sometimes ordered to be thrashed throughout certain journeys (*e. g.*, from Tyburn to Newgate), when, they were tied to a cart or post and dragged all along the road. For assault two men were once condemned to five hundred lashes and going among women convicts entailed the penalty of a hundred lashes. In an Australian settlement, a prisoner begged to be beaten

in preference to solitary confinement; this reminds us of the Indian Korava criminal who prefers blows to prisons. What other evidence is required than these instances to picture the brutality of the human heart? The wonder of it is that there have been men like De Guy of the Prison Service, who advocated flogging as the most merciful punishment we have. Nature is really more merciful to the convict than man, for, as soon as a certain number of blows are given, the nerves that carry pain from the skin are benumbed and destroyed.

Whether this barbarous measure is necessary in modern times requires no answer other than that conveyed in Dr. Barnes' opinion presented to the English Prison Commission of 1838: 'I never knew a convict benefitted by flagellation. The beaten man becomes a more desperate character. It was a blot on the transportation system.' Dostoievosky's observations are also noteworthy in this connexion. He says: 'It is a thorough misunderstanding of the nature of the criminal to believe that the fear of intense physical pain would prevent an outbreak of his malice or passion.' Aschaffenburg refers to its brutalising effect[1] on all concerned in its administration. At best it is adapted only to a very low civilisation like that of the frontier tribes of Northern

1. Aschaffenburg, p. 269.

India. Lombroso recommends the substitutes of fasting, douche, and hard labour for flogging.

Another penal method of prolonged physical pain is torture. Among the Anglo-Saxons, a slave who killed his master died in torments, for 'revenge was sweet.' In the Middle Ages, Bracton refers to 'the breaking on the wheel for treason.' Putting out the eye and cutting off the tongue and similar horrible maimings were common in many countries. Poaching in the King's forest entailed death or loss of eye-sight. Poetically enough, rape, up to the reign of Edward I, involved loss of eyes and emasculation. Burning alive, boiling alive, and flaying alive were actually practised in olden days. For heresy people were branded on the forehead. One of the worst tortures of medieval times was letting water fall drop by drop upon the victim's head from a height. Although it looked like a morning bath, it often produced madness and death in horrible anguish. Torture was then a fine art. Another apparently simple but most painful variety of it was pouring a large quantity of water suddenly down the prisoner's throat. This set up acute compression of the tightly packed up internal organs and caused cramps, spasms and great suffering. About the sixteenth century, the pillory was an English weapon of torment. It was a neck-catcher resembling a dovecote, to the frame work of which the victim was nailed

through the ear and some times was branded on the forehead, and all the spectators were free to stone the poor wretch. In the seventeenth century, many a poor old woman and man were victimised in the trials of witches. Woe to the man and still more to the woman who lived alone and kept a black cat! The witch finders set a prize on the detection of a witch and their unscrupulous agents brought poor men among their enemies into trouble on this score. It was a pity that in those days of nescience many a medical or pathological phenomenon was plainly attributed to the evil influence of witches.

To-day, the lynching of Negroes by the mob of white men in America betrays the impotence of civilisation to crush the devil in man. For instance, three Negroes were burnt at the same stake in a small town in the State of Texas in May 1922, on an alleged charge of assault upon a seventeen-year-old white girl. In another Texas town, a Negro charged with cattle-stealing was beaten to death by the mob. Negroes are lynched in the Southern States for the simple crime of speaking sharply to a white man, for owning too much land and for anything which threatens the absolute white supremacy. These tortures are sought to be remedied by the passing of a Federal anti-lynching bill which is focussing national attention at the present moment.

Next we shall turn to consider the penalty of fine. It may be traced to the time when a scale of wergild was substituted for private strife between the criminal and the offended party. It paved the way for social peace and led to the supersession of private revenge by the reaction of the sovereign on behalf of society, when it contributed very largely to the royal treasury. In the law of the Twelve Tables, a thief found red-handed or detected in the act would be killed if he was a slave; if a free man, he became the bondsman of the person robbed. But any thief captured subsequently to the act had to pay double the value of the things stolen. In Hindu law, homicide, theft, mischief, hurt, assault and defamation were all punishable with fines, but the privilege was not open to the servile class. One point to be remembered in this connexion is that as payment of fine was next to impossible for a poor convict, owing to the high value of money in those days, it happened very often that unfortunately he had to be outlawed or sold into slavery or subjected to corporal punishment for default in payment. Hence, fine often tended to become a class punishment and such is the case even now under a similar state of things. It is therefore necessary that the relative abilities of the offenders should be considered in adjusting the amount of fine imposed on them. This serves to indemnify the victim and diminish the enormous expenses of the judiciary. Those unable to

pay fines will have to be put to compulsory labour. For minor offences this may be substituted for imprisonment. In Holland, if a person accused of an offence is ready to pay the maximum fine fixed for it, proceedings are not started against him. According to Garofalo, fine must be levied for two purposes, *viz.* (1) to compensate the injured party and (2) to defray the expenses of prosecution and maintenance of criminals by the State. He desires that there should also be organised a State Compensation Fund out of fines levied, with a view to remunerate persons imprisoned but acquitted in a trial on the merits, as well as those injured by the act of the criminals. Bourneville De Massangy says: 'A fine is the most liberal, most divisible, most economical, completely remissible and therefore the most efficacious punishment.'

Just like the fine, the loss of civil rights is a fit penalty for the rich. It has its origin in ancient outlawry. Inasmuch as the adaptation to social life is the end of punishment, permanent loss of civil rights for any offence would be a formidable hindrance to the reform of the criminal in the interest of social welfare; but it is necessary that persons betraying a particularly base character should not be allowed any influence on private and public affairs. As Aschaffenburg says, people who cannot lead an upright life are unable to exercise proper

supervision and impart healthy training to their children. Hence, guardianship should not be a privilege of theirs.

Lastly, we shall turn our attention to the consideration of imprisonment. Solitary confinement is employed in modern times to avoid the manifold evils of herding the criminals in a common jail. Its advantage is at best negative. It affords some scope for individualised treatment and for the exercise of personal influence of officials in private conversation with the convicts. But if it is prolonged, it makes men a victim to the ravages of insanity; it breeds inertia and turns man into a beastly automaton quite unfit for life-struggle. Suicide is a very common result of cellular detention. Life in a cell does not give the prisoner a chance of standing the contact with the open air of social life. The prisoner becomes unable on exit from the dark cell to bear the shock of the outside world. A communal life is really far better if allowed under proper safeguards. It is enough to cite the account of the personal experience of Sir Robert Anderson, late head of the Detective Department in England, when he was locked up in a cell for a short space of time. He said: 'I seemed to be in a pit; there was no want of air and yet I felt smothered, and my nerves would not have stood the strain.' However, some writers are of the view that it is a fit penalty

for vagrants as it puts an abrupt stop to an irregular life, encourages reflection and facilitates thoughts of reform.

Turning to the ordinary form of imprisonment, we learn that prisons were at first used to secure offenders for trial at the Assizes and prisoners had then to pay for their maintenance; otherwise they were left to starve. It is said that accused men lay six or seven years in prison before they had their trial before a judge. Only in the time of Edward I, there are references to terms of imprisonment as a penalty. About the time of the Blackdeath, prisoners perished of hunger and thirst. The jails of those days were too bad even for hogs and dogs. While as early as 1597, Houses of Correction were established for the poor, the beggar, the prostitute and the night-walker and continued long, there was little consideration of prison reform till the days of Lord Howard. The prisons of that age were the dust-bins of demoralisation and pest-houses from which all kinds of evil sprang. Debauchery and open vice were rampant. Being germladen they were hot-beds of diseases, and were the 'mephistic dens' into which men, women and children of all sorts and conditions were thrown together. The prisoners were worried by the corrupt wardens, keepers and assistant jailors. New arrivals were fleeced and pillaged by their fellow jail birds for 'chummage and garnish money.' In the eighteenth century,

the English prisons were cleared of abuses and converted into penitentiaries built on cellular principles. This innovation was at first very salutary from the standpoint of social hygiene, but the new theory of reformation by solitude was productive of novel tortures which undermined the physical and moral health of the prisoners.

Prison life has been condemned by a host of writers as opposed to the healthy reformation of the criminal. It hardly serves the first purpose of punishment, *i. e.*, of combating recidivism. There is hardly any State that promptly attends to prison reform, for prisoners are a neglected minority, for whom it is hard to obtain a fair treatment even in a democratic land. Miss Edward Carpenter says: 'Our system does not create citizens but rather habituals.' Furthermore, upon the nervous, well-meaning and unbalanced nature of the occasional criminal, prison life has often a murderous effect by leading to insanity or suicide. As the public never employ a person who has ever passed the doors of prison house, 'the criminal moth is continuously drawn towards the penal candle, though maimed and singed, because he is drawn back by force of circumstances.'

The love of the weak-minded delinquents for prison life is voiced forth by a convict at Palermo in the words, 'I should like to tear to pieces the

man who speaks evil of the prison.' Prisons are said to be the universities of thieves where the old villains teach the young their trade. A sense of common fate creates an esprit de corps among them and secret communications are carried on with a cunning and skill that is inconceivable. Lombroso says that prison walls are a kind of daily newspaper containing references to comrades, and that talebearing, quarrelsomeness, lying and other vices are specially developed therein. The rich by bribing the guards put themselves in communication with the outer world, while their poor brethren often gain consolation from the fact that if they be arrested they are living at the expense of others. If £ 20,000 be lost as a result of crime, it costs the State four times the sum to prosecute and punish the criminals. It is therefore declared by penologists that theft is the most expensive national luxury. Needless it is to detail the evils still further. We may conclude this part with a summary of the modern modifications of ancient punishments.

1. Asexualisation and life-long segregation are adopted as substitutes for capital punishment.

2. As to corporal punishment, for children, it may be replaced by fasting, douche, etc.. and threat of their use. This kind of repression must be limited by indispensable necessity in the case of adults.

3. As to fines, the rich may be fined and the poor may be put to compulsory work. Indemnity should be awarded by the criminal judge to the injured party to save the delay or discomfort of a new trial at a civil court.

4. As to loss of civil rights, it must be limited as already indicated.

5. As to solitary confinement, the nature of the individual should be studied, and the segregation in a cell should be applied only if effective in the particular case.

6. As to imprisonment, a series of disciplinary measures has changed prison life into one of apprenticeship to responsible civic life. In some of the advanced countries it is mainly a preventive measure.

House-arrest on holidays is proposed by Dr. Hans Gross. On the ground that this would affect the poor workman's health, Aschaffenburg limits it only to the rich.

7. Deportation is limited to reasonable uses.

8. Torture has been totally avoided.

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PART III—SCIENTIFIC PENAL METHODS.

Scientific penal methods of the day differ according to the views of various schools, and are in general characterised by the principle of individualisation. The Italian positivists are usually charged with giving great prominence to anthropology, while the French determinists favour reform on sociological principles. In Italy itself, the reaction against the scientists is represented by the movement started by Alimena and Carnevala. The German school of reform headed by Professor Von Liszt devised a 'double entry' system of employing the traditional methods for habituals and reserving preventive measures for occasional criminals. Its views find clear expression in the following resolutions of the International Union of Criminal Law which met in 1889: (1) the mission of criminal law is to combat criminality regarded as a social phenomenon, (2) penal science and penal legislation must therefore take into consideration the result of anthropological and sociological studies, (3) punishment should never be isolated from social remedies nor must preventive measures be neglected, (4) the length of the imprisonment must depend not only on the material and moral gravity of the offence but also on the results obtained in treatment in prison, and (5) in corrigible criminals should be put for as long a period as possible under conditions where they cannot do any harm.

The main idea is that criminality should be studied from anthropological, sociological and juridical sides and be combated accordingly. The juridical side should be based entirely on the principles of science except where the country is not enlightened or advanced enough to break away from traditional ways. Education of public opinion on scientific lines is the way to prepare the people for salutary reform.

Unless the people become familiar with scientific ideas of crime, the gentleness of the courts to criminals may provoke the public into taking the law in their own hands. It is why Professor Tarde said : ' Be revolutionary in social science, but conservative in politics or criminal justice.' The reaction against the orthodox method took the shape of a new mode of interpreting the code in America, where the tendency has been to obtain just results by bringing the spirit of Law into line with Science, while its form remained unaffected. If the purpose of punishment is not the satisfaction of revenge or general prevention of society, it must be in the interests of the offender ; only in the case of protective penalties, the interests of the society should be directly cared for. Even in the case of incorrigibles, good training may in the long run prove effective and in time to come, fresh discoveries may throw light on winning them back to the right road. For the present, this

much is clear that the majority of criminals are amenable to reform.

Professor Devon says: 'There is only one principle in Penology which is worth any consideration; it is to find out why a man does wrong and make it not worth his while.' Hence, punishment should be determined on a consideration of the causes of crime and of the nature and degree of the delinquent's perversity. Where reformation is intended, repression should not be degrading enough to aggravate the depravity of the criminal or to impede his social reinstatement.

Law can facilitate individualisation by recognising the scientific classification of criminals and prescribing suitable treatment to each category of offenders. It must give a free scope for the adjustment of penalties according to the corrigibility or otherwise of the criminal. The Swiss Penal Code (1903) is said to contain provisions for modification of penal methods according to differences in culpability disclosed by psychological motives like vengeance, greed, malice, etc., and by the brutal manner of the commission of crimes. The bill introduced by Deputy Martineau into the French Legislature in 1894 contained penal provisions appropriate to eight degrees of culpability with reference to each offence. If they were subject to still further modification according to the general character of

the offender, they would exactly represent the requirements of the science.

While special asylums are necessary for insane criminals, habitual drunkards, hypnotised offenders, mental defectives and even subnormals, separate institutions are desirable among normals for children, adolescents and women criminals. Lombroso suggests that children who disclose marks of congenital delinquency should be segregated from others and thorough-going efforts should be made to train them in ways of moral restraint. For born incorrigibles whose homicidal acts betray cruelty and wanton egoism, Garofalo prefers the death penalty to every other form of absolute deportation. But, it is a question whether there exist such monsters with no sort of mental defect, on whom a life-long training would have no influence at all. Even in such cases, some writers hold that 'marooning' had better be adopted than execution. On the other hand, the jurist regards 'marooning' as suited to offenders not guilty of murder, but distinguished by an incurably violent or cruel disposition. The punishment consists in abandoning the convicts to shift for themselves in some sequestered spots like the distant oceanic isles or African deserts, far off from the haunts of civilisation.

Relegation to an oversea penal colony for life is recommended for incorrigible thieves and rapists; while habituals and criminals of passion

had rather be interned in a similar settlement for an indeterminate period from five to ten years, during which their progress should be watched with a view to release or life-long exclusion. Release must be conditional on acquisition of the habit of work, a knowledge of some useful trade and a decided change of temper which may supervene advance in age and alteration of sex traits. Although this sort of internment is the best substitute for imprisonment, some criminologists object to it on the ground that there would be very little scope for giving the convict colonists the benefit of educative methods and for the influence of healthy public opinion on the penal administration of the settlement.

This penalty is also regarded as eminently fit for political offenders. Men, whose freedom of speech becomes criminal because of the conflict between forces of change and forces of permanence in the State or Society to which they belong, should be subject to protective punishment of a most lenient character ; while, violent criminals require a severer dealing. Parallel modes of penalising have been adopted in countries like France, one of which is non-infamous and intended for criminals of an altruistic turn of mind, the other being ordinary for other classes of offenders. In dealing with anarchists, it is essential to provide them with the right kind of historical or philosophical knowledge which may repress their

misdirected enthusiasm, and keep the same within the limits of constitutional agitation. Every attempt to sour their temper must be discouraged and great care should be taken to segregate them not only from the public but from other sections of prisoners who might otherwise be seduced into disobedience of the law. In order that oversea penal colonies may be available for all the States of the civilised world, Garofalo proposes that States having such colonies should, by virtue of an international agreement, receive into them convicts from other Governments on payment of proper charges for their maintenance.

Sexual offenders should be subjected to medico-legal examination and be sentenced to corrective or protective punishments more or less like the insane. In the case of unnatural vice, the inherent pathological defect of the convict should be probed, if any, and sought to be removed as far as possible. Menace of imprisonment is of little avail in this matter. Where violence has not been used against the will of the victim, fine may be preferred to incarceration.

For occasionals and chance criminals, fine and compulsory service are deemed preferable. The Italian jurist insists that while the victim should be given a lien on the property of the rich offender, the penniless wrong-doer must be put to

labour by being enlisted as member of a State corps of workmen engaged in constructing public works.

Imprisonment is thought desirable only where there is need for restraint of the physical movements of any gang like counterfeiters of coin (in the West), and for enforcing obedience to the law, of persons who set it at defiance but otherwise exhibit no defect of character. In English prisons, occasionals guilty of serious crimes are placed by themselves in a group called the star-class; while, chance offenders guilty of mala prohibita under minor penal statutes like the Elementary Education Act, Vaccination Act, etc., make up the first division of prisoners who are almost as free as citizens in the matter of diet, clothing, work and interviews with friends and relations.

Wherever moral cure is attempted, either in prisons or in an oversea penal colony, it is bound up with indefiniteness of the term of detention. The legal hindrance to reformatory treatment is the fixity of the sentence, which makes the criminals indifferent to reform, as their release is not conditional thereon but on the length of the prescribed term. In the words of a great judge, 'to establish a fixed term for each crime would be the same as if a physician prescribed treatment for a patient, determining on which day he is to leave the hospital whether cured or not.' The

indeterminate sentence is also dictated by the elimination policy of penal law. Life-long imprisonment or transportation is inflicted with a view to the segregation of dangerous criminals from society. In Norway, the hardened offenders are subject to reformatory discipline for an indefinite period not exceeding three times the length of the sentence prescribed for the offence. A similar treatment of habituals is provided for in the penal codes of Switzerland and Russia and, in a way, in England.

Apart from the usual criticism of it by the juristic school on the ground that retributive justice requires a gradation of penalties commensurate with the seriousness of the offence, the indeterminate sentence is deemed impracticable, because some believe there is no reliable test for the cure of delinquency. We may answer the objection by the counter-question, how the physician is able to know that his patient has regained his health. The test is furnished by a reasonable probability that on return to free life, the prisoner has moral strength enough not to relapse into criminality. If hypocrisy is too deep for science, pathological conditions also lie latent from the eye of the medical man. In practice, pretensions can be detected and combated in most of the cases in the long run.

In well-equipped reformatories, the discipline is so fashioned as to serve by itself as a test and

evidence of the moral progress of the inmates. Relapse in the case of economic crimes is not probable, if it is preceded always by the securing of an employment which will sustain the offender when set free. Criminals of passion are quite capable of reform by the administration of fit moral training for a time, unless their delinquency is the result of pathological conditions.

Another objection to its adoption is furnished by writers like Berenger who recommends fixity of the sentence as a check against arbitrarism in law, combated and set at naught by the French Revolution and other movements against autocratic Governments. But, now that the upright principles sought to be enforced by fixed terms of punishment have been so long in practice as to become an integral part of the law, the artificial character of the check is thrown into relief and takes away much of the judicial discretion necessary in the interests of higher justice and equity. The advisability of investing the enlightened or scientific minded judges of to-day with discretionary powers for the benefit of the offender is clear from the provisions of the latest Dutch Code, which allows such a wide scope to the magistrate that he can pass all sentences from the maximum penalty of life imprisonment to the minimum one of a single day. The better opinion appears to be to leave the fixing of the duration of the penalty to a commission competent to examine

the moral progress of each individual prisoner. The judge could only determine the nature and choice of the punishment, in the light of the diagnosis made in the course of the trial. In this connexion, the resolutions of the Congress of Stockholm are noteworthy (1) that the punishment should be set only in its general form, by the Court, (2) the administrator should have large freedom and initiative in determining the adjustment of it in a manner suited to the progress of the individual.

It is proposed in the interests of conservatism to make the indeterminateness of the sentence only relative. In other words, a minimum term is fixed with liberty to prolong the sentence beyond it, or a maximum term may be presented to avoid judicial arbitrariness. But the limit of the latter is no bar to discharge if reform is accomplished earlier. This is known as the conditional discharge, and should not be confused with the conditional sentence.

The last question about this method is in respect of its practicability. What is essential for the success of every advanced social institution is required in this case as well. The enlightened activity of private citizens should strengthen the hands of the State and bring success to its efforts in this direction. It is to them that the Government has to look for the

effective constitution of the administrative staff. It was a private gentleman that proposed the adoption of the indeterminate sentence. When Mr. Brockway proposed it, the State of New York could only give the courts an option to choose between the usual punishment in the State Penitentiary and the commitment to the Elmire Reformatory.

LECTURE XII

PART I—MODERN PENAL SYSTEMS.

From the last lecture it must be clear that the reformation of the offender being the sovereign end of modern penal discipline, the penal systems of the day should be inspired by the principle of individualisation. It should also be noted that the most vital part of the science is that relating to the administration of punishment and that it is this domain which affords the widest scope for individualisation. Hence the significance of the efficiency of the administrator and the necessity of giving him a reasonable freedom to adjust the penalty to the educational and moral requirements of the individual. 'Even if you have the best law, the best judge and the best sentence and at the same time if the prison official is not efficient, you might as well throw the statute into the waste basket and burn the sentence.' In administration lies therefore the centre of gravity of the struggle against crime.

The history of reformatory treatment in England and elsewhere reveals to us the blunders of inexperience and ignorance of criminal science. The first step in the direction of reform was the adoption of the system of individual

cells in prison. It was Catholic in its origin. About 1703, Pope Clement XI first built the prison of San Michael at Rome on cellular principles. The model was followed in Milan and in Belgium, whence the system spread to the United States where prison discipline was developed on new lines in the light of social and practical considerations. Although several experiments were tried in rendering the system effective, it appears probable that the plan of the papal penitentiary was at first little understood by the imitators. It was intended for the purpose of solitary meditation of a religious character. Work and instruction were combined with a view to correct the behaviour of profligate youths and make them useful to the State. But little mindful of the inadaptability of the system for convicts who had nothing else to brood upon than their own sad doom, the advocates of penal reform made the State prison a centre of horrors for a long time. In several of the American States like Maine, the prisoners were kept in underground cells and their health was seriously impaired. The cells having been dark and unwarm, it happened that the feet of some prisoners were found frozen. About 1791, laborious employment was added to unremit solitude with a view to deterrence and reform. At a later day, the plan of associating convicts at work was started, the rule of silence being enforced among them.

While this was the case in America, a band of earnest reformers in England under Lord John Howard (1726-1790) drew the attention of the State to the miserable condition of the English prisons of the 18th century; at his instance, the first penitentiary was built at Hersham in 1776 and for the extension of the system, an Act was passed in 1778. Early in the nineteenth century was erected the great reformation engine the Milbank Penitentiary, 'a huge and gloomy many-towered prison with hundreds of cells along its three miles of corridors at a cost of half-a-million sterling.'[1] Many bungling experiments were made here. Owing to the spread of epidemic diseases, the building had to be abandoned for a while. Dark cells were for a time the order of the day and insanity and suicide made a havoc of the prison population. Brutal flogging with the 'cat' came in to relieve the solitariness of the prison unfortunates. Public opinion was quite ignorant as to what took place behind the walls of the prison. However, in 1832, the danger of driving convicts made by solitary confinement became a subject of controversy; when the English Government began to espy the silent associated system of the United States, according to which each prisoner slept in a single cell and the association was during hours of labour, but breach of the rule of silence while at

1. George Ives' 'History of Penal Methods,' p. 176.

work drew in the cowhide-cutting whips of the spying warders. If a convict was found looking away from his work he was instantly flogged by the overseer.

On the report of one Mr. Crawford, Secretary to the Prison Discipline Society, London, who was sent to America to study the prison systems of that country, a bill was passed in 1839 for the introduction of separate confinement; a special prison was erected at Pentonville in 1842 and the model of it was followed in the construction of about fifty-four prisons within the next six years. Mr. Crawford sternly carried out the details of his isolation theory. In his report, he gives a brief account of discipline in an American penitentiary on the following lines: 'A prisoner on being received passed through three rooms. In the first he was undressed, in the second he had a bath and in the third he wore the prison garb while his face was hid under a mask. Blindfolded, he was shut up with nothing to do in a cell for a few days till he was crushed under the stress of solitude. He had his exercise in a triangular den for an hour every day. The prisoner was put to work subsequently.'[1] Mr. Crawford added moral and religious instruction to confinement. Under his new discipline, insanity increased fivefold. The convicts were ground under the tread-wheel and the crank. Children under

1. George Ives ibid, pp. 184, 186.

twelve were ground under the task of 10,000 revolutions per diem.

The model system broke down under the strong attacks of geniuses like Dickens and Charles Reade that shook it to its dungeon depths. The words of Dickens may be noted: 'It seems to me that the objection that nothing wholesome or good has ever had its growth in such unnatural solitude and that even a dog or any of the more intelligent among beasts would pine and mope and rust away beneath its influence, would be in itself a sufficient argument against this system.'[1] Experience alone made men realise in the long run, that in solitude the human brain has the strange quality of self-comsumption. Although the solitary system was broken up, the silent system ran its course long after. The rule of silence was enforced under the whip of the warders even on Sundays. In 1865, there was an attempt on the part of the Legislature to deal with criminals on rational and humane principles. The Prison Act of 1877 transferred to the Home Secretary the management of local prisons in England that were under the control of the County and Borough authorities. It abolished the crank and the tread-wheel and there was a reduction of separate confinement from three months to one month and work was rendered less penal. A

1. George Ives ibid, p. 199.

board of visitors was organised for each prison to hear complaints from every prisoner and report on abuses to the Secretary of State. In 1894, prison investigation was undertaken in detail by the Gladstone Committee which urged the abolition of unproductive labour, the extension of associated work, an improved classification of convicts and the institution of penal reformatories for young offenders. Its leaders were mainly responsible for the Prison Act of 1898, the English Children Act and the Prevention of Crime Act of 1908. The effects of beneficent prison reforms were visible in a reduction of the number of prisons and the fall of the prison population. Before the Act of 1877, the number of prisons was 113 and it came down to 57 in the last decade. The daily average population in prisons in 1880 was 10,299, but it fell to 3,106 in 1909. The ratio of persons sentenced to penal servitude fell from 6·6 to 3·4 per 100,000 of the inhabitants. At the same time the general population increased from about 25 to 35 millions in England.

As regards the plan of work in prisons, some of the great systems of the nineteenth century deserve our attention.

About the year 1854, a grade system based on scientific principles of the day was introduced into the Irish Penitentiary. It was later on applied in the Danish prisons. The Indian

Penitentiary is more or less based on the Irish model. In the latter prison, the convict was first immured in a cell for eight or nine months, during which his task was mainly oakum-picking, and was put upon vegetable diet and poor clothing; this was the first grade. In the second grade, the convict was put to work along with others and by dint of his merit he could rise to the first of the four classes in that grade. Each higher grade brought him greater reward, wider instruction and larger contact with the public. A convict was given one mark per diem for his good conduct and work, and fifty-four marks entitled him to promotion from one class to another. In the first class of the second grade, the door of the cell was kept open during the day and one who reached the first class may pass into the third grade in which the prisoner was a wage-earner in the field, wore his own dress and was in full touch with the outside world, so that he was at prison only during certain hours of the day and after this grade was passed through, the reformed convict was set at liberty subject only to police surveillance till the termination of his term. By showing progress, the prisoner could have his term of imprisonment reduced by a third or a sixth in accordance with the rules in this behalf. At the same time, erratic conduct might push him down to a lower grade.[1]

1. Lombroso, p. 337.

Resembling the Irish in many respects, the Danish system had certain peculiarities of its own. The convicts were first placed in cellular prisons and instantly put to work not so monotonous as the task set in Irish prisons. Work was combined with instruction from the outset, and detention in the cell lasted from three to six months. In the next grade which covered a period of six months, work was paid for at the rate of 2 shillings a day, and the prisoner got his instruction in schools where he was separated from others. Certain luxuries like a mirror or an almanac might be got with half the pay and letters might be written to friends, and visits received every two months.[1] In the third grade which covered a period of a year, the convict workman was paid at the rate of 3 shillings a day and might send a part of his gains to his family. In the highest or the fourth grade, the pay was raised and the prisoner worked in the open air. He was allowed to have flowers and birds and to go out of his cell. For good conduct, there was a reduction of six years to three and a half and of three years to one, and of eight months to six. The prisoner thus passed from absolute seclusion to solitude at night only and from it to almost complete freedom. The incorrigibles were segregated in a common prison and allowed only the freedom of working in the fields

1. Lombroso, p. 238.

of the neighbourhood. The Danish arrangement appears to be the more lenient in the treatment of the criminal. A similar if not a more indulgent system obtains for the first division of non-habitual convicts, guilty of trivial offences under English Criminal Law at the present day.

In India, prison reform was first considered by a famous Committee in the year 1836. It drew attention to the lax discipline that was the order of the day and condemned the policy of engaging the convicts in extra-mural work on public roads. However, the Indian jails in the fifties of the last century were in a very neglected condition. They were damp and insanitary. Solitary cells at Burdwan and other places were exposed to the direct rays of the sun. In Bihar, the jail was situated in the centre of a populous town and placed under the care of a native Indian officer who was in dread of its inmates. The guard was not well equipped. Corruption and intimidation were rife. There were very few warders, and the prisoners were let loose to roam wherever they could. Free women were allowed to work side by side with male convicts. The female ward was in the same wing as that for the males. The rich prisoners had it all their own way. For small tit-bits, the jail official allowed them to keep and use forbidden articles and luxuries. Owing to lack of sanitary arrangements, diseases like

cholera decimated the jail population. When in 1856, Dr. J. Mouat, Inspector-General of Prisons, made a special tour to the various jails in Bengal, Bihar, Orissa, Arakan, etc., he found the conduct of the jails in a slipshod condition. The prisoners were allowed to go out of the gate and purchase things at the shop of a retail dealer. Very often, contractors who supplied provisions to prisons robbed the authorities with the connivance of the staff. In the prison hospital, the compartments of women were separated from those of men only by open railings. The prisoners did not care to obey the prison rules, but often applied for the removal of fetters, diminution of labour, increase of food and clothing and other privileges. Some of them set up caste to evade the task of even washing their own clothes. In some jails where prisoners were given a money allowance for the daily meal, not a few of them starved to save money and therewith purchase forbidden articles such as opium or tobacco. Although judges and magistrates paid periodic visits to the prisons, they did not trouble themselves about the improvement of prison conditions. It is amusingly curious to note that a certain magistrate suggested a sugarcane policy by ordering in an entry in a jail book kept for the purpose, the supply to a prisoner of both sweetmeat and 'a liberal allowance of cane.' Originally, life prisoners were slaves to the end of their term.

The high death-rate in Indian Prisons led to the institution of a second Jail Committee in 1864, but nothing substantial was done till 1889, when some tangible progress in prison reform was achieved as the result of the report of an efficient committee appointed the previous year. In consequence, most of the defects described above were in a way remedied. The small jails situated in various towns have been abolished, and at present obtains the system of subsidiary, district and central jails with the police lock-up on the one side and the penal settlement beyond the sea on the other. With the development of the means of communication, the policy has been towards concentration of prisoners in central jails. This has been carried furthest in Madras where there are only five District Jails for the whole province. Next comes Bombay which has fifteen District Jails, while there are forty-four in the United Provinces, twenty-five in Bengal and twenty-five in Burma. Every central jail has accommodation for more than 1,500 convicts and is situated in a tract of desert land. There are separate wings for convicts of both the sexes. It consists of two enclosures with several open spaces. It is built generally on the octogonal plan as that at Coimbatore. In one of the enclosures there is a factory situate, supplying work for 250 prisoners. Cotton material from it is supplied to all Government departments. The offices are situate in the centre of the jail from

which radiate yards of blocks and workshops. The insane criminal is first placed in an asylum and on becoming fit transferred to the penitentiary. There are special rooms for the accommodation of the refractory. Cells are utilised for confining habituals at night and for solitary confinement. There is a dormitory where every prisoner sleeps on an oblong earthen couch a few feet high from the ground. Every jail in India has also its kitchen garden. The guards have got their quarters within the compound of the jail.

The prison staff consists of a Superintendent and a gradation of jailors and warders, male and female, a clerk and a hospital establishment. The Superintendents in charge of the jail attend to all the requirements of the institution, and subject to the control of the District Magistrate, have powers of direct communication with the Inspector-General of Prisons. Full-time servants below the Superintendents are employed on furnishing security for proper discharge of their duties.

The treatment of the convict is based upon the grade system. On admission, the person of every prisoner is thoroughly searched and weighed; then he takes his bath and receives a suit of jail attire. He has also got a history ticket giving an account of his career. His serial number is written on a wooden tab, hung round his neck by a ring of galvanised iron wire not

removable over the head. The convict is classified according to his caste and food is distributed accordingly. Rations are weighed before and after cooking and it is the object of the authorities not to make the prisoner lose in weight while in prison. Strong meals are supplied twice every day, one in the morning and another in the evening. In the Coimbatore jail, prisoners are served some grain kanji at 6 o'clock; at 11 they receive a midday meal and from 12 A. M. to 5 P. M. they are at work. Their health is cared for and the medical officer examines them every week with a view to detect cases of skin diseases. As soon as any epidemic makes its appearance, the prisoners are removed as rapidly as possible into camp. Convicts sentenced to hard labour should have their hair removed with the exception of the shika of a Hindu. But the hair is allowed to grow a month before release. On Sunday mornings, a parade of convicts is held and complaints, if any, are received and enquired into. Alarm parades are held at intervals to secure discipline.

As regards work, the lowest tasks are assigned to low class convicts. Each of the rest is taught a trade or put to the work well-known to him, the main occupations being agriculture, horticulture, weaving, coir-making, oil pressing, grinding flour and the cleansing of grain. There is also a power-driven factory for the

manufacture of cotton cloth. Short-termed prisoners are employed on the farms and gardens. All works are tasked and the tasks are checked daily by the jailor and short work is punished. Punishments in the jail are in the shape of fines, penal diet, fetters and handcuffs and flogging in cases of grave assaults and serious disobedience. Rules of remission are applicable to those sentenced for a year and longer.

There are two chief grades of convicts. The first grade falls into three classes. A good convict gets two marks every day one for work and one for conduct. Five hundred marks elevate one to the second class, eight hundred to the first class and one thousand to the grade of convict officer. The institution of convict officer was first started by the Governors of British Settlements in the Eastern Archipelago, in the twenties of the last century. It was subsequently extended to the inland jails in India. The lowest convict officer is the night watchman, the privilege allowed to him being that he can get an extra mark for doing sentry duty in one of the wards for a couple of hours at night. Otherwise, he is to work as any other non-official convict. On showing progress, he may be lifted to the position of the convict overseer who should supervise the work of others for which he is paid at the rate of two marks per diem. The highest post is that of the convict warder,

who earns six marks per diem and has his own special diet.

The convict warder system peculiar to India is condemned on several grounds, one of which is quite sentimental, *viz.*, the undesirability of placing one convict over others of a similar status with him. The other objection is the excessive employment of convicts not duly qualified according to the rules respecting this. Men sentenced from six to twelve months became convict officers in many prisons and the Indian Jails Committee reports that in a Bengal jail out of 150 convict officers 99 were ineligible. The best point about the system is that it gives an impetus for good conduct and development of character to non-habitual convicts sentenced for a long term; but excess is likely to prove mischievous in any event. After considering the arguments *pro* and *con*, the Jails Committee has recommended that the office of convict warder should be abolished while the posts of convict night-watchman and overseer might be retained. In allotting the officers to various division of prison inmates it is always advisable to keep off habituals from occasionals. No convict officer should be left in independent charge of any section. The duties and privileges of convict officers should be uniform throughout the country and the institution should not be abused as a means of effecting an economy in paid establishments.

The Indian grade system of to-day compares no doubt favourably with its counterpart in western countries. Even during the last century, although the prison discipline was in a neglected condition, it was not characterised by inhumanity or brutal severity as in England. If discipline was too high strung in England, it was too lax in this country except in respect of escapes. The ugly Indian prison in Bihar and at Patna was perhaps more homely than the ordered Millbank dungeons of London.

It will not be out of place here to consider briefly the recommendations of the Indian Jails Committee (of 1919-1920) in respect of prison reform. It is urged that every jail should be under the supervision and control of a full-time Superintendent well versed in the principles of Penology. An elementary knowledge of the science is recommended also for jail subordinates. Expert officers should be properly paid and given leave from time to time to study the prison administration in other countries. The maximum limit for every Central Jail should not exceed 1,000 at a time. According to the view of the majority of the Committee, separate confinement of the prisoners at night consistently with the maintenance of their health is deemed necessary in order to put a stop to corrupting conversation, unnatural vice, gambling and other abuses. Work of an ameliorating character is recommended

for every inmate of the prison, barring a certain section of convicts sentenced to simple imprisonment for trivial offences. Even prisoners who do no work should be supplied with books meant to improve their knowledge and character. While labour should be such as to train, reform and assist the prisoner, it should not be so rigorous as to raise a feeling of permanent hostility to society. Instruction in up-to-date methods of work should be imparted as it is likely to enable the prisoner to command a living wage on release from jail. Familiarity with power-driven machinery is regarded as profitable and 'mind-awakening' to the convicts. In allotting work, regard should be had to the limited powers of mental and physical defectives and uniformity in the tasks is desirable for all prison in the country. Extra-mural labour is deprecated owing to the difficulties of maintaining discipline, of keeping up the separation between habituals and non-habituals and of avoiding irregular interviews and the like. Only long-termed prisoners may be employed on public works which permit concentration of labour at a single centre and that too, where the climatic conditions are favourable and water supply is not scarce. Canal digging, railway construction and road making are denounced as unsuited for convicts. Fetters should not be used while engaged in this kind of labour. Although agri-

cultural jails are suggested as quite appropriate for short-termed prisoners, it is deemed impracticable to maintain and manage them with requisite efficiency in this country.

With a view to test the effect of reformatory methods on convicts, it is proposed to introduce a probationary period, during which the prisoners may be allowed to go out to work by day on farm operations and required to sleep at night in the jail. The Committee refers to a scheme contemplated in Burma of establishing a farm colony in the Delta of the Iravady where prisoners some time after staying in jail may go and live with their families under the guidance of an efficient officer of the Salvation Army. Wherever moral cure is effected and tested by positive marks of progress the indeterminate principle is inevitably bound up with it. Where it is relative, a minimum term is fixed with liberty to release the prisoner thereafter if he is fit for it. In England, this principle has been recognised in the provisions relating to conditional release under the Prevention of Crime Act of 1908. Sometimes a maximum term is fixed in the case of habituals. Under this Act the period ranges between three and five years after the term prescribed for an offence.

In this country, conditional release may be ordered by the Government under Section 401 of the Criminal Procedure Code and the authorities

of reformatory schools have a discretion to release youthful offenders at any time they deem fit beyond the age of 14. The Jails Committee advocates the adoption of a scheme based on the indeterminate principle. In every province there should be instituted a revising board with the Inspector-General as its chairman. The Sessions Judge of the area where the jail is situate and a non-official nominee of the Government should be the other two members of the board for every jail. The meeting of the board must be convened by the Chairman in the course of his visit to each prison and it should attend to cases submitted by the Jail Superintendent. Sentences of long-term convicts should be subject to revision by the board after the lapse of two years and a half since imprisonment. Non-habituals may come before the board after having served their term for a year. There should be a secretary in the nature of a parole officer to obtain the best information about every particular regarding the convicts' physical and mental conditions and submit the same to the board. The Revision Committee should bring to the notice of the Government cases fit for release with or without any security and subject or not to any period of probation. The parole officers ought not to be the police but other educated men of good character and capacity.

The last but not the least point of importance is the provision to be made against recidivism. The prisoners' wages should be saved against being utilised as capital for delinquent enterprises. 'In Belgium and Holland the authorities retain seven-tenths of the wages of convicts doing compulsory work, six-tenths of those condemned to solitary confinement and five-tenths of those undergoing simple imprisonment. The rest is divided into two parts, one of which is used in prison and the other on going out. By way of guarding against recidivism, the prisoner should not be allowed to change his residence without notice to the authorities. Provisions to this effect are laid down in Section 565 of the Criminal Procedure Code with reference to known depredators and habituals. In the case of habituals who possess influence enough to shark up a band of lawless resolutes in their local village or town, it is thought advisable that their return to the original scene of action should be forbidden. Surveillance of the convicts is another method of checking recidivism. It is condemned on the ground that it interferes, by disparaging him in the eyes of the employer, with the prospect of the ex-convict. It should therefore be uninterfering though active, lest it should lead to unemployment and consequent recidivism. It should not be allowed to be abused by the self-conceited and self-seeking policemen. There are cases of arbitrary

arrests for failure to salute an officer for addressing a suspect and for being away from the residence a few minutes after the fixed moment, etc. Surveillance should be secret and paternal and not alienating and, unless it is exercised within its legitimate limits in the spirit of the American Probation Officer, it may prove highly prejudicial to society itself. Just like the authorities, the private employers of released convicts should in the interest of the latter extend their obligation to the point of keeping their antecedents in secret. In European countries, there is an institution called " The Home for Released Convicts " which helps them to secure employment and livelihood. In England, more than 12,000 men receive aid from such institutions. These institutions bestow a great advantage on criminals of passion and accidental criminals. One thing which is necessary is that such institutions should keep themselves informed of the conduct of those who obtain any footing on their recommendations. At the same time they should be guarded against being converted into criminal associations by habituals and incorrigibles. These institutions should not make the delinquent's life a bed of roses but must quicken their powers of initiative and perseverance. Extension of this advanced type of institution is a matter for consideration of those who are responsible for social welfare.

In this country there are only very few societies rendering aid to discharged prisoners. Unless the ex-convicts escape the practical prison of infamy, they cannot regain their position as responsible members of the society. George Ives says: 'We set the ex-convict an impossible task; we make him engage in a kind of conflict with the community and we tell him join and win and he drifts down and is lost.'[1] With this in view, the Jails Committee recommends the creation of a Central Association in every Presidency Town, to which should be affiliated local societies to be started for each Central or District Jail outside the metropolis. While their composition should be mainly non-official, they should receive a large measure of official support. The Jail Superintendent, the Medical Officer and the District Judge should be ex-officio members of the managing body of the local society. Each association should nominate one of the members as its Honorary Secretary under whom paid agents should be employed to carry on its work in detail. These officers should act as a connecting link between the prison people and the local employers of labour. Every step should be taken to enlist public sympathy in aid of ex-convicts. It should be the duty of the agents to find work for discharged prisoners, to visit the unemployed every day and look after their needs and to give

1. George Ives, p. 381.

them even boarding and lodging till work is found. It is suggested that the agents of these Aid Societies may be required to act as parole officers under the control of the Revision Board.

According to the view of criminologists, work must not be such as to provide the criminal with means which he may be tempted to employ in the commission of crimes. Occupations like engraving, photography, lockmaking, etc., are not fit to be taught to prisoners who are recidivists. Any business which requires the use of dangerous implements should be introduced with great caution. Even book-binding and cabinet-making may furnish tools for criminal activity. That trade which may least facilitate criminalism should be taught to recidivists. Lombroso recommends farm work and the manufacture of articles in straw, rope-making, pottery-making and the like.

Again, work should be suited to the ability and tastes of the prisoner in order that he might take interest and get a good grounding therein. It must supply relief to the monotony of prison life and pave the way for good comradeship and friendly emulation. Work under compulsion will not bear any good result. A love for it must be created and work should not be exacting. 'The contractor should be eliminated from the prison system.'

The Jails Committee is of opinion that the prison discipline should not be prejudicial to the chances of reforming the convicts. It is suggested that punishments for prison offences should not extend over lengthy periods of detention. Fetters must not be imposed continuously for more than three months; solitary confinement should be abolished and the maximum term of separate detention be reduced to three months (instead of six months as at present). Flogging ought not to be cheapened by frequent use, but reserved for grave offences like mutiny and serious assaults on public servants and visitors, and it should not be brutal in its character as in the case of the 'drawing-stroke'. The painful punishment of standing handcuffed to a staple above the wrist deserves to be abolished; but, for the present, its infliction should be confined to offenders medically certified to be fit to suffer it. Penal diet should be combined only with light labour. Rules in respect of silence should be relaxed so as to apply only to those who talk aloud on objectionable occasions and when ordered by an officer of the prison to desist. Good books should not be included in the list of prohibited articles and neck-rings should be done away with and leg irons as well, for the convict officers.

As regards reformatory influences, the Committee recommends that convicts sentenced to a term of not less than six months (instead

of one year as at present) should be allowed the benefit of remission rules. A deduction of two days for good conduct and two days for industry is thought desirable instead of one day for each. These rules should also apply to prisoners unable to work through causes beyond their control like being ill or at court for no fault of theirs or in transit from one jail to another. The Committee remarks that the special remission of fifteen days for good conduct throughout a year is not granted in a satisfactory manner at present and advises the exclusion of offences punishable with a warning from the list of wrongs affecting the special reduction of term. It records its protest against lump remissions on public occasions.

Next to this, the allowance of gratuities for good conduct and work done in excess of the standard task is regarded as a great incentive to reform. The Committee fixes the gratuity per mensem at Re. 1 in place of 1 anna or 1½ anna allowed in some provinces. Furthermore, it is suggested that liberty may be given to expend one half of the gratuity earned by a prisoner on approved comforts as in the English Prisons, since power to earn them exerts a telling effect on the conduct of the prison inmates. It is the view of the Committee that prisoners ought not to be punished for reasonable complaints to visitors. A board of visitors, official and non-official, with

the District Magistrate as its ex-officio chairman should be constituted in every district. Letters and interviews should be permitted as liberally as is consistent with discipline. For this purpose the committee have prepared a draft of rules in detail. In the matter of education convicts aged above twenty-five should be imparted elementary instruction only if they evince a real eagerness and ability to learn. In every case it is essential that the hours of instruction should not interfere with the jail labour. It is desirable to maintain a library of worthy books in each prison with facilities for circulation to those who can read them. Men of undoubted integrity and good character should be chosen for supplying religious and moral instruction to the prisoners. There should be toleration of the due performance of religious duties by the prisoners in their customary way, while in every form of activity it is of vital importance to avoid the overcrowding of prisoners.

One of the greatest problems in prison administration is how to break in the criminal and weed out the wicked modes of thought and action that have struck root in him. For this purpose the administrator must be endowed with a capacity to put himself on a plane with the criminal and realise his ideas and feelings. He should also make a judicious use of his temper. He must be a psychologist of sympathetic imagination.

Able directors like Obermayor of Denmark should be in charge of prisons. Devices should be adopted to create a sense of justice in the mind of the criminals. They can be spurred to good conduct only by influencing their passions and interests. Vanity is their main passion and hope of liberty is their dream. Despine says that the offender should be impressed with the necessity of becoming honest by utilising the same passions which would make him still more depraved if left to himself. He instances a novel method of announcing the penalty to the prisoner. The convict who makes a mistake is led to a meditation cell and the director goes in after an hour to tell him the penalty which the rule requires. Material advantages like the avoidance of the jail attire, liberty to decorate cells with flowers and pictures, privilege of visits and reduction of terms should be made the reward of merit and good conduct. It is interesting to note that a gentleman visitor of the convict jail in the Indian penal settlement was hardly able to distinguish between convicts and ordinary servants at work.

Obermayor hit upon the plan of showing respect to the convict's individuality by dividing them into small groups and allowing them to choose their own superintendents and teachers. He divided 3,805 convicts into 21 classes with 28 teachers, all of whom, with one exception, were

prisoners. Division into several groups facilitated impressive instruction. Rigorous discipline is likely to provoke the criminals into disobedience and neglect of rules. As Miss Carpenter said 'they are great children whom society ought to govern as it governs children'. The Danish administrator used to rebuke the whole group to which an offender belonged. This device was instrumental in creating a sense of solidarity in the right direction. The treatment of the criminal should be characterised by a judicious combination of gentleness and severity. If the administrator shows indignation or excitement the same passion will be reflected in the prisoner's mind. Some of the violent prisoners become most docile if their sense of self-esteem be quickened in the right manner. A convicted carpenter's behaviour was intolerably violent but when the oversight of other convicts was given to him, he soon became the best behaved of all. Similarly a thief was converted by a sister in prison who with intent to reform him, entrusted him with the care of the wardrobe. Convicts are struck by forgiveness and example rather than by rebukes and lectures. This may also be illustrated by an instance of the exercise of opportune forgiveness from Lombroso. 'A prisoner of Citeaux wearied by his labour, threw his mattock at the feet of the director, Albert Reey ; the latter, without saying a word, took up the tool and went to work in the other's place.

The unfortunate man struck by this noble lesson of practical sympathy took up his work and did not offend again.'

Let us have a peep into the history of the Indian penal settlement, which is in a way instructive and interesting. Even as early as 1818 discipline was developed on more or less scientific lines in the Indian penal settlements at Bancoolen, Singapore, Penang, etc. This was due to the efforts of humane administrators like Sir Stamford Raffles, General Man and others of their width of view. The first Indian penal settlement was located at Bancoolen in Sumatra in 1787. This was contemporaneous with the settlement of English convicts in Australia. At that time the labour of transported convicts was utilized for the cultivation of various products peculiar to the land, especially as the inhabitants of the island were little inclined to work. Sir Stamford Raffles, who was Lieut. Governor of the place, in his report to the Indian Government about the year 1818, throws light not only on the state of the settlement but also on the penal law of that day. His report is full of sane views which were a century in advance of the ideas of those times. It strikes the keynote of the penal reform of to-day. 'The object of the punishment, as far as it affects the parties,' says Sir Stamford Raffles, 'must be the reclaiming them from their bad habits, but I much question

whether the practice hitherto pursued has been productive of that effect. This I apprehend to be in a great measure in consequence of sufficient discrimination and encouragement not having been shown in favour of those most inclined to amendment and perhaps to the want of a discretionary power in the chief authority to remit a portion of the punishment and disgrace which is the common lot of all. It frequently happens that men of notoriously bad conduct are liberated at the expiration of a limited period of transportation whilst others whose general conduct is perhaps unexceptional are doomed to servitude till the end of their lives. So, coercive measures are not likely to be attended with success. I conceive the same advanta will arise from affording inducements t good conduct by holding out the prospect of becoming useful members of the society and freeing themselves from the disabilities under which they labour. There are at present about five hundred of these unfortunates. However just the original sentences may have been, the crimes and characters of so numerous a body must necessarily be very unequal and it is desirable that some discrimination should be exerted in favour of those who show the disposition to redeem their characters.' Sir Stamford also suggests that the chief prison authority must be invested with the power of freeing well-behaved convicts from the obligation of service and

permitting them to settle as citizens of the place. He gives us to understand that marriage by inducing a sense of responsibility had a salutary effect among the convicts of his settlement. He proposed the division of the convicts into three classes (1) those who have lived at the place for three years may be allowed to settle on land and give evidence at court; (2) those who may be placed in the position of ordinary workmen; (3) abandoned characters put to work during the day and in confinement at nights. To be brief the report of Sir Raffles contains the germs of all the later developments in penal discipline.

In 1823 the settlement was removed to Penang as Bancoolen passed into the hands of the Dutch. The convicts were not here so free as to carry on trading on their own behalf. They were worked in gangs upon the roads and were employed in jungle cutting and the reclamation of mangrove swamps, brickmaking and felling timber, etc. Forts, seawalls, palatial cathedrals and churches were the handiwork of convict labourers. Many a convict fell a prey to tigers and venomous reptiles like the hamadryads. At the same time convicts became adepts in hunting out the tigers and catching the venomous reptiles. About 1850 intramural work was introduced in the settlement. Baskets, easy chairs, lounging seats and other rattan works were commonly made. In the year 1827 one resident

Mr. Benham hit upon the plan of employing well-behaved convicts to oversee their fellow-prisoners owing to the difficulty of securing free warders. The good convicts were even allowed to hire themselves out to residents as servants and owing to the great demand for labour they got high wages in so much that some of them managed to establish themselves as landlords. Several of the convicts saved money and set up on release as keepers of cattle or letters-out of carriages and horses. General Man, who was resident at Penang from 1860 to 1867, drew up improved rules and established a system of convict warders on a universal, firm and lasting basis. He opened also several workshops and various trades for the benefit of the convicts. In 1865 the penal settlement was removed to the Andaman islands by the orders of the Crown.

The report of Dr. Mouat regarding the system that obtained at Singapore is very glowing. He says, 'I have sincere pleasure in recording the unmixed satisfaction which I have experienced from a careful examination of the jail and the system of prison management in use at Singapore. The scrupulous cleanliness, perfect plan of conservancy, excellent order, well-regulated system of labour and punishment and the high standard of health attained are not surpassed in any other well-regulated institution,

of the same kind that I am acquainted with in Europe or Asia. In many important points of internal economy and discipline Singapore can fairly lay claim to bring *Primus in Indis* in the adoption and practical working of principles that are now generally accepted as sound and correct.'

The Andaman islands are situate in the centre of the Bay of Bengal and are 600 miles long and 20 miles broad. The headquarters of the administration is located at Port Blair, so named after a marine surveyor of the eighteenth century. Port Blair is 300 miles away from the coast of Burma, 400 from the Malayan Archipelago and 700 from the Indian shores. Nature has rendered Port Blair a lonely spot from which escape is perilous, but has surrounded it 'with a terrible tranquility which is depressing over and above the beauties of the harbour.' A police force of mixed nationalities is maintained in the island. With the exception of a small trading community the population comprises of released convicts, their descendants, guards and officers. Sheep-raring, cattle-breeding, forest-clearing, land-reclamation and craft building are the chief of their occupations in the island. The convict population is not less than 12,000 of whom about 1,000 are women. As regards the character of criminals H. L. Adam is of opinion that only a small percentage of them are very dangerous while a vast majority are capable of considerable

respectability; others being occasional perverts. But he expresses his fear of the subtlety and cruel craft of the eastern malefactor who is credited with 'swiftness of thought, readiness in device and rapidity of action.'

In the Indian penal settlement the treatment of the criminal represents the best type of it in the nineteenth century. Any newly arrived convict is subjected to stern discipline and work in a cellular prison for about six months with a view to shake out the rebellious ideas of his head and break him in.[1] His work is not exacting. His exercise in walking round and round a Dantesque ring recalls a feature of the early nineteenth century English prison. After being broken to harness the inmate of the cell is transferred to an association jail where he works hard in company with his fellow convicts for a year and a half. Here he sleeps alone in a cubicle and work is adjusted to his capacity, invalids being put to light and sedentary work. Subsequently the convict passes another three years in the same way but now he sleeps in barracks. Nearly at the end of five years he finds life easy. He is allowed the enjoyment of small luxuries and may invest his savings in the Savings Bank. Petty posts of supervision await him. Ten years after his arrival the prisoner is let off on a local ticket-of-leave. He lives in a

1. H. L. Adam's Oriental Criminal, Chapter 23, p. 340 to 342.

house of his own, keeps cattle or land and may move within the island. He is also permitted to marry an eligible convict woman or send for his family from his native land. The ticket-of-leave men fall into two classes (1) those who receive assistance from the authorities and are free from the payment of public charges, (2) those who require no assistance and whose position is assimilated to that of the citizens; these are said to be in the stage of self-support.

The marriage of convicts is an institution peculiar to this and to the French penal settlement at New Calidonia. In view of the fact that the majority of the criminals are not dangerous and also in the light of the conditions under which marriage is permitted by the authorities, the fear of fostering the seeds of criminality thereby is thoroughly groundless. On the other hand it is the best way to convert reformed convicts, who have imbibed lessons of self-restraint and self-help, into responsible citizens. According to the rules in force marriage presupposes the consent of both the parties and their relatives in India. The convict's record or the woman's disability is often a bar to the sanction. The married couple must reside where they are told to and the authorities are careful enough to curb idling and escapade. Women too are subjected to the educative influence of hard and light work in the course of the

first three and next two years respectively. Till the termination of the term the convicts have no civil rights. To more capable of them instruction is given in the science of First Aid under the supervision of medical officers and under the auspices of St. John's Ambulance Association. Thus a knowledge of the elements of Anatomy Physiology, Sanitary Science together with information about Tuberculosis and Malaria is imparted to convicts of various nationalities. A word about the incorrigibles is necessary before closing this part of the lecture. The incorrigibles are segregated for life in a spot called the Viper island which is designated as "hell" on account of their horrible associations and a vigilant watch and ward is kept over the island. To facilitate communication Port Blair is furnished with the latest scientific appliances like the telephone, the wireless and the semagraphic.

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PART II—MODERN SCIENTIFIC REFORM.

The penal systems on the Indian continent and in the convict settlement represent the best results of the efforts directed to reform the criminal before the Positive School of Criminology spread its teachings far and wide. There was no scientific measure of testing the capacity of these convicts. If a large portion of the 'lifers' at Port Blair are not really a dangerous class,

their treatment might have been unnecessarily long and tedious from the point of view of reformation. Grades with their proscribed periods may not be suited to all kinds of criminals. The only division known before the study of criminology was into recidivists and ordinary convicts the insanes being excepted. All the grade systems pay a very meagre attention to the classification of criminals according to their individual nature. The Indian system is the nearest approach to that of penal colonies suggested for turbulent and dangerous criminals, recidivists and persons of bad reputation.

The government of India has recently adopted the recommendation of the Jail Committee for the abolition of transportation save for dangerous offenders for the following reasons: (1) the malarial and insanitary condition of the Andamans, (2) the excessive size of the convict population rendering the management of a heterogeneous collection very expensive and troublesome, (3) the ineffective character of the punishment at the present day, (4) the paucity of women required for married responsible life, (5) absence of public opinion to restrain the present authorities, (6) the difficulty of giving the convicts the benefit of modern reformatory methods of an educative character.

Now we shall consider the diverse methods of educative treatment proposed in modern times for

various classes of offenders. The worst-danger of prison life is that the prison stigma once for all blights the prospects of even an occasional or chance convict; hence modern Penologists pay great attention to the treatment of offenders outside the prison house. Whether the institution of pardon is necessary in the interests of first offenders or not has been for long the subject of a great controversy. The theory of pardon is that the judge must be invested with power to forgive persons guilty of light offences for excusable reasons. Beccaria has laid down that, in the absence of harsh penalties, pardon is unnecessary and its purpose is better served by just and humane punishments. However, the fact that it is based on the right of the sovereign to punish according to his will does not detract from its advisability in the interests of social welfare. The juristic formula cannot fit in with all the countless complex realities of life and pardon may be one of the devices which bring law into line with life.

The Hon'ble Mr. Justice Heaton of the Bombay High Court is said to have suggested that the law ought to recognise a finding of 'warned and discharged' in some cases where 'the anxiety, publicity, inconvenience, expense and delay incidental to the trial are sufficient to deter the accused permanently from relapse.' In certain countries this goes by the name of a

judicial reprimand. A kind of judicial admonition was in vogue in Roman Law known as 'Severa interlocute.' In the laws of Manu gentle reproof is recommended for first offenders. This has existed recently in Bavaria, Turkey, Spain, Portugal, Russia and some of the Swiss Cantons. Ferri is of opinion that judicial reprimand has no effect on confirmed criminals while occasional offenders have no need for it. However, certain class of criminals midway between the two groups may have need for it. Acting on this view the Indian Jails Committee has recommended that a finding of 'convicted and discharged' should be recognised in the Indian Penal Law.

The conditional sentence is regarded in modern times as the best substitute for imprisonment in the case of first offenders. It was regularly adopted in Belgium in 1888 and later on by various other European States. It has spread also to Egypt, Japan and other countries. It was originally adopted to save not only the prison stigma but also the inconvenience of short sentences. The execution of the sentence is deferred on condition of future good behaviour for a certain period, say three or five years, on the part of a first offender guilty of an offence punishable with not more than six months' imprisonment. In case of any relapse the original penalty is added to that imposed for the new offence. This institution has been very

effective in Belgium where in 1891 only 2 per cent. of those who received the benefit of the conditional sentence relapsed into crime. Sentences suspended represented 7·5 per cent. of committal to prisons and 6·7 per cent. of fines. In England, the conditional sentence was enforced by the passing of a series of Acts called the Probation of Offenders Acts from 1887 onwards. Here, the offender is required to bind himself over or furnish surety for good conduct and the term of probation is fixed at the discretion of the magistrate. In this arrangement, the position of the surety became more or less assimilated to that of the guardian of the former. The term is fixed and can be altered only by a fresh order of the magistrate. According to the Probation of Offenders Act of 1907, prisoners found guilty in summary trials may be let on parole before the sentence is passed. In India, Section 562 of the Criminal Procedure Code applies to first offenders the benefit of release, on probation of good conduct, provided they are young and their offences are not punishable with more than two years' imprisonment. Now this section has been amended so as to apply to first offenders below 21 years, guilty of offences not punishable with death or transportation for life, and to first offenders above 21, guilty of offences punishable with imprisonment for not more than 7 years.

In Norway, the conditional sentence has undergone extensive application; even the sentence decreeing compensation to the victim being postponed in the interests of the first offender. Further, if a criminal warrant is issued by a prosecuting attorney or the Police Authorities and it is accepted by the accused so as to imply confession of guilt the court without further trial grants a conditional sentence which remains in force for three years. The conditions under which it is passed are good conduct, age below 18, earnest confession, triviality of the offence and readiness to satisfy the victim and other extenuating circumstances. The discretion of the judge is exercised in a way suited to the character of the delinquent. Even a relapse will not annul the suspension of the sentence if it does not indicate a defect of character.

This institution has been attacked mainly on the ground of its incompatibility with retributive justice and impartiality of punishment. This may appear to be a case of conflict of law with science. But it should be noted that the conditional sentence does not put an end to punishment which is averted only by subsequent good conduct, failing which, punishment is in a sense enhanced. It may in justice be extended to occasional criminals and criminals of passion when their general character is not affected by their inconsiderate acts. It spurs the offender to practise self-

control and regain his reputation and relieves him against the baneful effects of imprisonment. As De Quiros puts it, 'the conditional sentence ever so imperfectly answers to a tutelary function of the State' and combined with pardon is 'a measure of a higher and enlightened justice.'

Far more advanced than this is the probation system prevalent in America which is really 'an ethical manifestation of tutelary punishment in modern law.' In America a judge at New York may suspend the sentence for almost any crime, however grave, on condition of good conduct for life. This is a power which it is said the English judges had at common law. Unlike the conditional sentence this does not savour of penalty at the outset; for no sentence is passed at all and if the probationer's future conduct is satisfactory, nothing remains on record against him. This system will be successful only in an advanced society where there are respectable men likely to interest themselves in the reform of the young delinquents entrusted to their care. It may be said to date from the appointment of the State Agent in 1869 in Boston in the State of Massachusetts. The State Agent in 1878 was supplanted by the probation officer who has been charged with the investigation of the conduct of young offenders. He goes deeply into the causes of the individual's delinquency and gathers information about cases assigned to him. He should

verify whether the probationer fulfilled the conditions imposed upon him and report upon his conduct to the court. He acts as a tutor dativus of the probationer and views every offence not from the standpoint of the Police officer but as a sign of anomalous conditions indicating the direction of correction. He also finds a suitable occupation for the probationer when necessary. He is given full freedom of action in regulating the conduct of the probationer. When a lad is first brought before the judge the officer throws light on the facts and circumstances of the offence laid to his charge so as to enable him to see for himself whether the accused is guilty or not. At this stage, there is only a diagnosis of the offender's character useful enough to decide on the kind of education needed for him. As no sentence is then passed, there is no stain of legal punishment. The accused is required to declare his willingness to observe the conditions of probation and submit to supervision. Then he is placed in the charge of a respectable person who puts him in the proper path of moral and economic progress by educating him in a trade and isolating him from the influence of wicked company, unhealthy environment and intoxicating drinks. His erratic tendencies are repressed and the growth of the good in him is facilitated. The guardian is required in several cases to send reports to the central probation office on the strength of which the probationer's term of

tutelage is curtailed or prolonged. In some States, statutes permit the extension of the term only up to the period of the penalty prescribed for the offence of which the probationer is accused. In certain cases, it is only up to three years as the judge may fix it. The supervision of the probation officer is humanitarian rather than detective.

The next stage in this system is initiated by the issue of a warrant for the appearance in court of the probationer who does not satisfy the conditions imposed on him. It is only at this stage that the sentence is passed on the offender. This system presents an ideal for the treatment of young culprits, occasional criminals, and for almost all offenders except those whose criminality springs from pathological or abnormal conditions. Excellence in practice can be obtained only by the co-operation with the State of all the charitable-minded well-to-do citizens in the country. It is the view of criminologists that, in order that the system may work in a more efficient manner than at present, the probation officer must be equipped with a knowledge of Criminal Anthropology and that, in order to satisfy the aggrieved party, payment of damages wherever possible should be held forth as a condition of release.

Science has in recent times led to the establishment of an institution which bids fair to

make the State guardian of neglected and delinquent children. It is what is called the *juvenile court*. It is based on the principle that anti-social conduct begins and develops early in childhood, and if it be not properly restrained it ripens into criminality in later life. It is here rather than anywhere else that the child is father to man. Hence the necessity to subject neglected children even below seven years to reformatory treatment. The erratic courses of children cannot be effectively prevented with the weapons of criminal law, since their contact with the rigours of police courts and prisons is likely to spoil their atmosphere. The object of the institution is to restrain disobedient children from developing their insubordinate behaviour. Measures are taken to sharpen their sense of honour and protect them from contact with criminal types of men. Juvenile courts are presided over by judges of a paternal frame of mind. Children are dealt with according to a special code devised to meet the incidental delinquencies or faults of childhood. In the United States, the paternal magistrates are assisted by officers who obtain the fullest information of the children from teachers, parents and neighbours. Even the tiniest indication of a devious course is promptly noted and corrected. If a boy travels in a tram-car without paying fare, he is brought before the magistrate and required by way of penalty to copy and learn by heart the rules of

fare and repeat the same before the court. What is remarkable is that none of the punishments carry any taint. The establishment of juvenile courts may be of the highest service in this country.

This receives very strong support in the recommendations of the Jails Committee. The first juvenile court was set up at Chicago just before the dawn of this century. England copied the example by establishing a similar one at Westminster. It is stated that at Chicago 17,000 cases out of 20,000 are dealt with out of court by the chief probation officer. In England, Mr. Clarke Hall, a Stipendiary Magistrate is reported to follow the most scientific methods in his children's court. The JailsCommittee strongly condemns the contamination of undertrial children by contact with adult criminals and suggests that remand homes as those in London and Birmingham should be provided for accused children not unmistakably above the age of 15. While approving of the home of detention at Calcutta, it is remarked that the chief defect of the institution is that the officer in charge of it and his wife are ignorant of the vernacular. As regards the children's court, it is suggested that a special magistrate should preside over it in large cities like Calcutta, where the number of cases tried in 1919 was 1,638; although in the mofussil, the ordinary magistrates may sit in a special room

for the hearing of cases against children and follow a most informal and elastic procedure.

In the treatment of children that come before the juvenile court, parental care or that of enlightened relatives, if kindly and efficient, should be preferred to institutional life, while it is essential to keep them away from immoral or criminal family surroundings. In order to assimilate institutional life to family environment it is proposed to adopt the cottage plan of placing twenty or twenty-five children in a single house in the charge of a man and his wife or merely of a house mother where girls alone are concerned. As regards the probation of children it should be noted that a juvenile, even after a solitary reconviction,may set himself, aright, in which event, commitment of him to any institution may prove worse than useless. Hence the necessity for individualised study of every child offender. Dr. Morrison urges that in the matter of committing juveniles of different ages, it is essential to classify them according to their fitness for various kinds of schools. Children fit for poor-law and broad day schools should not be put into industrial institutions. Children, for whom the arrangements of the day industrial school are best suited, should not be thrust into reformatories. Infants below the age of 7 require a different treatment from those aged 12 whose life in their turn should not be mapped out on

the same plan as that of juveniles of the age of 18 and 20.

In reform schools, strict punishment often misleads and alienates children. In the matter of discipline, the Jails Committee suggests that whipping should be very rare and not be repeated if once found ineffective. In cases where developing faculties are late in acquiring equilibrium, it is found that juveniles succeed in actual life who are failures in institutions. Next to the probation system, the reformatory school is recommended as a special institution for children offenders. In the English Children Act of 1908 and the Madras Children Act of 1919, persons under 14 are regarded as 'children' and those aged between 14 and 16 as 'young persons.' In pursuance of the provisions of these Acts it is recommended that convicts under 16 should not be imprisoned except where it is inevitable in the view of the court. In England and Wales, the adoption of this rule quickly borught down the average number of children prisoners from 1,000 to about a dozen in a year, so that imprisonment of persons under 16 has now become a thing of the past. Children aged between 13 and 19 are received in the reform school while the industrial school admits pupils up to the age of 16. These two may be combined as parts of one and the same institution which may facilitate the passing of inmates from one department to another in the

course of their progress. In India, there are reformatory schools in Madras, Bombay, Delhi, Burma, Bihar, Orissa and Central Provinces. Officers in charge of these institutions appear mostly not to be the best qualified men to deal successfully with their inmates. Another defect is that most of the institutions are overcrowded. The reformatory school at Delhi is considered the best and its number is only 106. It is the opinion of the Jail Committee that none of these should accommodate more than 250. It is desirable that they had better be called 'certified schools' and be divided into junior and senior schools according to the classes of children admitted therein. The Madras Children Act urges the necessity recognising private institutions as well. The Committee records its favourable impression about a school at Bombay under private management called David Sassoon Industrial and Reformatory Institution. It is thought advisable to bring these schools more and more into line with ordinary schools of the country, and children going out of them must be kept in touch, with a view to further guidance and assistance and a record should be maintained as to how many turn out well or ill.

It is suggested that just as in the case of juveniles under 16, adolescents aged between 16 and 23 should receive special treatment in Borstal Institutions. In England the age limits of adoles-

cent offenders are 16 and 21 and they are dealt with under the Prevention of Crime Act 1908. In India there are special jails for adolescents at Tanjore, Alipore, Dharwar and other places. The Tanjore Borstal Institution is conducted in a satisfactory manner in the interests of juveniles below the age of 21. The curriculum of studies comprises elementary education for two hours per diem, gymnastic exercise for an hour and industrial training for about 5 hours a day. In certain cases the teachers are assisted by select convicts in doing their functions. Reformed juveniles are granted on release a small sum of money to enable them to start in life and Government has also appointed probation officers to find work for them.

It is suggested by the Jails Committee that adolescents guilty of serious crimes should, instead of being imprisoned, be segregated and placed in a special institution called the Juvenile Jail. Similarly adolescents bound over under the security sections of the Criminal Procedure Code should be committed to this and not to the ordinary prison. The Committee is also of opinion that there may be, according to the degree of progress or otherwise of the inmates, an exchange of some of them from the Juvenile to the Borstal Institution. With a view to avoid the sting of infamy the jailor had better be termed Deputy Superintendent and assistant jailor be

called Assistant Superintendent, the main officer in charge being called the Superintendent. Adolescent offenders should not be classed as 'Police-registered' or 'known-depredators.' In order to estimate the criminality of adolescents it is necessary that in the annual statement there should be a classification of prisoners aged between 16 and 23, and of those between 23 and 30, a column being allotted separately to convicts between 31 and 40.

Although the Committee has not advocated special educative institutions for convicts above the age of 23 it is thought advisable by several criminologists that in the case of children born in low unsuitable surroundings reformatory influence may be exercised up to the age of 30. Dr. Roberts, a teacher of great experience, expresses the idea that the size of the body as determined by stature, weight, chest and girth, has definite relations to precocity and intelligence and that children among the poorer and lower ranks of society attain their full stature at about 25 or 26 and not at 21 as is the case with those of the professional classes. The superior effect of the reformatory method is visible in the fact that in England three-fourths of the children that go out of the reform schools and five-sixths of the industrial schools do well in their after life. It redounds to the credit of the Indian Jails Committee that while urging the necessity for applying principles of

reform to prison life, its members have expressed their opinion that there should be no compulsory infliction of imprisonment with reference to any offence and suggest that the phrase 'or with fine or both' should be substituted for 'and fine' in Sections 317, 325, 335, 380, 381 and 420 of the Indian Penal Code. With reference to payment of fine, a week or any other reasonable period of time not less than that should be allowed and if it is desirable or practicable labour may be substituted for imprisonment. Thus, modern penal reform tends towards the reduction of imprisonment to a minimum.

The final process in virtue of which the reformed convict is restored to citizenship is represented by the institution of rehabilitation in France. This takes place some time after the expiration of the sentence in certain cases without any action being necessary on the part of the criminal, provided there is no recidivation. This is done by effacing the evidence of condemnation from public judicial records. In other cases, the ex-convict may apply for rehabilitation. Then his application is heard and decided just like a suit. If his application is rejected, a person may repeat it in two years. If his request is granted, the entry of conviction is expunged from the judicial record kept at the place of birth of the ex-convict.

Similarly, in the German Criminal Code, loss of civil rights is one of the important penalties inflicted for periods of time varying with the gravity of the offence. Although it is not expressly mentioned as a penalty, any person convicted of an offence under the Indian Penal Code suffers a loss of status which is scarcely redeemed. At least for occasionals and reformed ex-convicts, rehabilitation may be of the greatest service and therefore be adopted in this country.

On grounds similar to those assigned for the establishment of juvenile courts, institutions for female offenders are also advocated. Gina Ferrero argues in their favour for the reason that, barring a few of the worst type, the majority of women wrongdoers are hysterical or occasional offenders more often guilty as accomplices than as principals, and as such they do not merit the penalty of imprisonment. Another reason against imprisonment is the interruption to the family caused by the absence of the mother and wife away in prison. Gina Ferrero says that the conditional sentence, or judicial admonition or punishments hitting female vanity like shaving off the hair will be sufficient to correct many. She also adds that poisoners, swindlers and similar dangerous criminals should be segregated in a reformatory with compulsory labour and silence as additional checks.

Now that we have dealt with the two classes of irresponsibles, *viz.*, children and women, we shall see whether any separate institution has been assigned to the lunatics who belong to the third class of the same category as implied in the Indian phrase (children, insanes, and females). The segregation of the insane criminals is necessary for two reasons, one being that they should not be allowed to exercise a pernicious influence on other insanes, and the other that their association with the innocent of the lunatics does violence to the feelings of the kinsmen of the latter. Hence such a separation was made in England in 1840 by allotting a portion of Bedlam for them. In Fisherton House another asylum was opened in 1844; that at Broadmoor was started in 1863 and is maintained more or less on scientific lines. Here the inmates have been classified into convicted and unconvicted; the latter are again divided into tried and untried. This class of untried lunatics consists of men who became insane prior to the commission of the offences of which they were accused. The various classes are kept apart and treated in a manner suited to individual requirements, and in the light of recent researches further improvements are likely to be made.

For hopeless recidivists permanent segregation so as to render them harmless is advocated by criminologists. But life-long imprisonment

being both cruel and expensive, the establishment of penal colonies like the agricultural one at Mesaplas founded by the Belgian Government is recommended. In this colony there are four classes of converts, 'dangerous and aggressive individuals, recidivists, persons of bad reputation and those who are lacking in the moral strength required to resist temptations.' Here the colonists supply themselves with all the necessaries; they build their dwellings and cultivate articles for a near market and for themselves. Any convict shirking work is imprisoned on bread and water. All work is paid in a kind of coin current only in the colony itself.

What is essential for the success of every advanced social institution is the enlightened activity of private citizens who should strengthen the hands of the State and bring success to its efforts in this direction. We may refer for instance to certain institutions which are splendid monuments of private initiative in this field. Crime being a social phenomenon it is an imperative duty not only of the State but of each responsible member of the society to take active steps as far as lies in his power to combat it. It was in the New World that the new spirit first manifested itself in a magnificent scale when a private gentleman Mr. Brockway inspired by the researches of Lombroso opened the Elmira Reformatory at Chicago. The reformatory

receives first offenders aged between 16 and 30. If the offender is guilty of a most serious crime he is not taken in. As soon as one is admitted he is photographed, examined by a doctor and then shut up in a room for a time. In the meanwhile all the information respecting his nature and nurture and the circumstances of the offence of which he has been convicted are obtained by the Superintendent of the Institution with a view to determine the kind of treatment applicable to him. Then the inmate is put to a technical or industrial class that he may be enabled to earn an honest penny for his livelihood. He also obtains a general knowledge of various important subjects and receives the physical training suited to his constitution. Literary taste is cultivated by lectures in various branches of knowledge and a weekly review called 'The Summary' is run, to which contributions are made chiefly by the literate of the inmates. While healthy mental interests are thus induced, a moral bent is given to the intellectual activity of the members by arranging that all situations including the post of teacher in technical schools are filled from among the inmates themselves. The prisoners fall into three grades, good, middling and bad. Every one is promoted according to his merit from the last to the first to which certain peculiar privileges are incidental. Even those of the first class are tempted in most trying ways to see

whether they have acquired steady and solid gounding in good conduct. If any prisoner in a higher grade receives a black mark for bad conduct he should go down to the lowest grade and do very hard labour. If a first class inmate yields to no temptation, he is conditionally released and only when he manages to get a regular footing, his release becomes almost complete. He should, according to the rules, submit an account of his progress for six months since release. He obtains his full liberty only a year after he leaves the reformatory. There is no restriction that any one should be detained for the full period of his sentence. This institution is the best of its kind most useful to repress recidivism in the case of first offenders.

Even in respect of the institutional treatment of the various types of offenders, it is America that has furnished us with the earliest model. The Penitentiario Nacional at Buenos Ayres which was established a year after the starting of the Elmira Reformatory, receives adult offenders of all types in the province. It is a lonely building surrounded by Nature's wealth and grace. Its cells are similar to the rooms allotted to students in well-built hostels and supplied with stationery, book-shelves, etc. Its workshops are the admiration of every visitor and teem with all kinds of agricultural and industrial appliances. Even the kitchen the handiwork of

the prisoners is best ordered and cooking is done only by steam. Every offender must choose some handicraft and is entitled to wages for his work which lie accumulated till his release, when they are handed over to him. Release is only when he is provided with employment outside the penitentiary. Every one works during the day up to 5 o'clock in the evening, then eats his dinner and afterwards receives instruction in various subjects as History, Geography, Languages, Drawing and Arithmetic. Inmates are arranged in various classes according to their competence. There is also a splendid library for their use. Good conduct is rewarded and a register of moral and intellectual progress of each individual is maintained in detail. Weekly lectures take the place of the magazine conducted at Elmira. The peculiarity of this institution is the greatest importance it gives to work, consistent with the requisite measure of freedom in each case.

Prevention is better than cure; hence in order to check the delinquent tendencies of unruly boys one gentleman Mr. George tried various devices and finally hit upon the idea of inducing his wards to look after one another. About 1896 a tiny republic was established on his estate at Freeville near Ithaca and the lads were dubbed citizens. They were obliged to regulate their conduct by laws and rules of their own making. This was originally intended to

discipline them only in vacation times. Gradually it became a permanent arrangement. The republic is in the form of a town; the children are organized into families each consisting of ten or twelve members presided over by two adults. They pursue agriculture and several arts and crafts, necessary for village economy. Being in the nature of a colony the republic coins its own money and it has got a bank and a tribunal as well. Its establishment is open to all the inmates who settle their holidays, games, entertainments and mind the financial affairs of the institution. The colonists consist of children over thirteen and the period of stay is about three years. Social responsibility is realised by lads and girls in this mock-republic. The extension of such mock-republics may prove very useful. This is called the George Junior Republic.

Similar systems of penal colonies are advocated for insanes and incorrigibles. There is one such for the insane in Buenos Ayres founded by Professor Cabred and called the ' Open door system.' It is a village in which thousands of lunatics live together. The professor had to be at the expense for obtaining land and erecting a building thereon. The rest of the buildings were built by the lunatics themselves. All the building materials are in the workshops of the place. The patients are ever occupied with the construction of new buildings. The official staff consists only

of a director, a doctor and a hundred mounted warders to intervene in cases of suicidal or homicidal outbreaks. The more dangerous lunatics are confined to the work of making articles of twigs and bushes. The peculiar feature of the institution is freedom of movement combined with compulsory, continual and regular occupation of an almost unvarying character. A colony on these lines would be suitable for a large mass of habitual criminals who may do useful work under surveillance and prove beneficial to the community.

We shall now advert to two American institutions, one preventive and the other penal. Miss Mary Dawson's Probation Office at Boston is a model institution for the supervision of girls. The antecedents and progress of every girl are regularly entered and preserved in a series of registers. The wards behave most affectionately to their guardians, feel remorse for their faults and ask advice and help as of guardian spirits. The officers are affectionate protectors and are scrupulous in the fulfilment of their duties to the Central Office. The probation officer should report every fortnight on the progress of the wards. He should supervise the ward at home and in his place of employment and threaten him with legal proceedings, should his conduct prove unsatisfactory. He can extend the terms of supervision indefinitely or convert it into imprisonment.

A full description of this institution finds a place in Gina Ferrero's 'Criminal Man.'

A splendid instance of a private institution for female delinquents is furnished by the Reformatory Prison for Women at South Framingham near Boston. Every prisoner is subjected to anthropological examination. If the prisoner is found ablebodied she is put to learn the trade suited to her constitutional ability in one of the work rooms. At night she sleeps in a separate cell furnished with beddings, a chair and a table. After doing the duty fixed for the day every inmate can work for herself for extra profit or she may be reading. If she is not a skilled worker she receives instruction in some handicraft. What she earns for herself accumulates and passes to her on her release. Moral progress is then and there rewarded. If she has children they are left in the nursery under the supervision of the doctor who is in charge of the adjoining infirmary. Release is the crowning glory of uninterrupted inprovement and untiring industry. Subsequently she is assisted in securing suitable employment. For the first few months she is under the supervision of a member of a committee of ladies interested in the reformatory. Similar private penal institutions are yet to develop not only in this country but also in Europe, and will come into being only with the dawn of the active co-operation of the people with the State in

repressing crime for the supreme ends of social defence.

The final question that urges for consideration is the problem of utilising the criminal in the interests of social welfare. The criminal is like the floatsam and jetsam thrown out by the social machinery in its onward progress. In these days when even the refuse of every material is utilised as a by-product, is it not possible to see how the delinquent refuse or rag of society can be turned to the best account? In other words, we should consider the mission of the criminal in this world of God. A great writer said 'The State must mend or end them.' Even if the State wants to end them it may be done by utilising them as political tools. Anarchists are of the view that crime is a weapon of war. Crime loses its integral character when utilised for certain purposes.

History teaches us that the indirect effects of crime have been in the past beneficial in a great degree. Tyranny (the rule of the tyrants) served a useful purpose in the political development of ancient Greece. 'Is not the Code of Machiavelli, a long series of criminal projects with a political end?' In the words of Lombroso, 'Cæser and Catiline found their men among rascals and the nucleus of almost all great rebellions had been criminal. Forgers and swindlers set in motion so many different activities that

they give a powerful impulse to material progress.' For instance, the construction of the Suez Canal as well as the Penama is said to have been due to a colossal swindle. How did the Maharata Empire come into being except by the devious courses of its founders? Were not the Pindarics useful to the native rulers to stem the tide of war for a time? Need we refer to the story how Lord Clive managed to outwit the avaricious Umachund.

The English navy had its origin in the piratical attempts of Drake and his contemporaries. It was usury that led to the accumulation of capital needed for the marvellous development of industries in modern times. Among people with a weak or inefficient government criminals have been popular justices. In Sardinia and Corsica the brigands were at times the real guardians of the oppressed. A section of the village watch in India was recruited from classes of professional thieves. But for smuggling, the poor in France could not have had salt which was heavily taxed in the time of Louis XIV.

'In California all the public officers including the judge ship were in the hands of a band of real malefactors who stole with impunity and were acquitted when accused. The majority of the people becoming disgusted rose up and lynched them. Since then California has been the quietest State in the Union.' This reminds us of an incident

which took place in Madras some time back, when a few attempts of kidnapping real or fancied aroused popular indignation and lynching resulted in its immediate repression.

Owing to their serviceableness in other directions some criminals excite a tragic pathos. A dismissed official planted an Italian colony in Venezula ; it was certain thieves who introduced the cultivation of potatoes into New Caledonia. A Sardinian brigand prevented crime by lending cattle to the poor who would otherwise have had to steal them. The meritorious works of these delinquents show that, after all, the criminal is a human being. The criminal man is as much a figure of fiction as the economic man of political economy ; such a person is nothing but a phantom. It is for science to discover the means of utilising the human qualities of criminals. Lombroso recommends war and surgery for homicides, the police and journalism for swindlers and colonisation in wild and unhealthy countries for vagabonds. But it is a doubt how far a State would prosper if swindlers have recourse to police and journalistic departments. He says, ' When we study the lives of the great pioneers in Australia and America we see that they are almost all born criminals, pirates and assassins whose excessive fondness for action strife, carnage and novelty which would have been an immense danger to the civilised society found

a useful outlet in the midst of tribes of savages.' A criminal of violent energy is said to have become a famous man when he found opportunities for spending his excess of activity as a servant in the navy. An athletic workman may behave well so long as he finds in his games or kindred occupation an outlet for his energy. If sickness keeps him idle he may turn dangerous. Some have become criminals on account of their morbid fondness for the sight of blood. If they take up the trade of a butcher they may be harmless to society. Owing to the excess of eagerness or ambition to win a rightful end several men have resorted to objectionable means and have become criminals in consequence. It is culture and foresight that can win them over to the right path. Many are criminals from an impulsiveness which drives them as irresistibly towards good as towards evil. Such people should be employed in positions calculated to benefit humanity by prompt action. With their help diseases may be combated and marshes may be turned into fertile fields.

With respect to political criminals and criminals by passion Lombroso advises that the State should direct to great altruistic works, 'the energy and the passion for the good, the just and the new which animate them.' It is the immaturity of their innovations that makes them unsuitable and dangerous.

The pleasant spots in the criminal's nature as fondness and pity for others should be detected and developed in a manner as to leaven his whole character. With the perfection of the science the utilisation of crime might reach a stage at which may be realised the sublime goal prophesies in these lines by saints of yore:

> "The wolf and the lamb shall feed together
> and the lion shall eat straw like a bullock."

A HISTORICAL SKETCH

OF

CRIMINAL LAW

PART I—BEGINNINGS OF PENAL LAW.

Law in the hands of Austinian jurists is the latest of all the checks to anti-social conduct and is itself based on certain other means of social control like public opinion, custom, religious and moral ideas. It is therefore clear that there could be no juristic conception of crime antecedent to the birth of the law. Crime in its scientific sense is a natural phenomenon and has its origin in the conflict of the self-seeking habits of the individual with the common customs of any social group that insure its survival in the struggle for existence. These customs are the expression of the social instincts and sentiments of the species concerned in its adaptation to the conditions of its environment. Where the self-seeking instincts of the members of a group are as among the bees so developed as to harmonise with their social feelings, there will hardly be any phenomenon like crime. But such a harmony is rare owing to variations peculiar to the development of individuals. Hence even in animal societies we find the analogue of crime wherever

the activity of the individual runs counter to social needs. Whether social feelings are traceable in the vegetable kingdom awaits research.

Now, what stands for law in any primitive society and subsequently passes into law with the development of the State is Custom. Hence Manu said 'Immemorial custom is Transcendental law' and Justinian laid down 'Long prevailing customs being sanctioned by the consent of those who use them assume the nature of laws.' The same idea is echoed by Bacon when he says 'custom is the principal magistrate of man's life.' Even to-day the layman learns what is law from the custom of the people who give effect to it rather than by a study of statutes and case-law.

We are here concerned only with the customs which are the internal preservatives of social order and the violation of which calls forth the defensive reaction of the social group; for they form the nucleus of criminal law and regulate the relations concerned in the building up of society by supplying rules of conduct which limit individual liberty to the extent required for the pursuit of common ends and aims. While the preservation of society is necessary for the furtherance of common interests, the individual has needs and aspirations peculiar to himself and the welfare of the society is little more than the welfare of the individual members thereof. Social re-action should therefore be

restricted to the necessity of pursuing the ends and aims for which social union is indispensable. To harmonise individual liberty and social control is one of the greatest of human and social problems; for what are common interests and what strike at the root of society are determined by social conditions which may change from time to time. They are determined in the long run by the opinions and sentiments of the majority of a social group, although temporarily they may be settled by those in power therein. The opinions and sentiments of the majority reflect the intellectual advance of the people. The majority of those in power may be deceived into a belief that what is really not anti-social is anti-social. Then their reaction may prove anti-social in reality. Hence the force of the maxim, 'Crime as a punishment and punishment as a crime.'

Now let us see how social conditions and popular beliefs have furnished checks to anti-social conduct. First we shall study the state of society as reflected in custom before the introduction of written codes. The initial phase of the struggle for existence is economic. Man originally sought his food like other animals by hunting or gathering fruits and nuts. Even this simple purpose was achieved best by the combined effort of several individuals who pursued the same vocation. The combination of the several individuals would be insured only by subordinating

their individual need to that of the group, so that in the hunting stage of economic life there arose customary rules regulating the mode of hunting and the division of the spoil. These were probably the first law, and the violations of them, the first crimes of primeval society.

Very early in social development man appears to have felt that the exercise of the sex instinct if unrestrained is subversive of social order. On the dread of incest has been based one of the fundamental taboos of savage society against the sexual commerce of men with women of the same totemistic group. Probably with it began the rules that largely determined the constitution of most of the earlier forms of civilised society like the family, the clan, and the tribe.

When men pursue their ends in social groups it is quite probable that one group may come into conflict with another. Here looms into view a human phenomenon of serious consequences to social life. Some member of a social group may be so grossly self-centred as not to care a jot if he endangers for selfish ends the existence of the clan or tribe to which he belongs and he may readily play into the hands of the enemy. Naturally he then becomes the object of general indignation. He desires to victimise the group and the group in turn reacts by victimising him. His act of treason is the highest offence known to law.

In the infancy of human society when curiosity was not developed beyond what was needed for animal existence, the ends of any social group would be very few and simple and so would be the violations of rules adopted for their satisfaction. With the expansion of his superior intelligence, man began to scan himself and Nature. While on the one hand he developed personal introspection, on the other, his mind was engaged in contemplating the ways in which he could harness and press into service the mighty forces of nature. His observation, partial as it was bound to be at that stage, led him into the belief that natural forces were impelled by agencies like himself and that he should coerce or please them in order to gain his ends through their favour. In consequence, he deemed magical rites necessary for social welfare and magical or superstitious beliefs largely influenced his conduct in primitive society. J. G. Frazer in his book on 'Psyche's Task', gives numerous examples of the ways in which superstition has strengthened the respect for government, the dignity of human life, the regard for private property, the solemnity of marriage, and contributed to a strict observance of the rules of sexual morality. Here lay the line that divided man off from the lower creation.

In primitive society magic was applied for purposes good and evil; when employed for

the latter purpose it was termed witchcraft or black-art. The practice of witchcraft within the group was deemed fatal to social existence and therefore it met with violent disapproval of the people at a very early stage of social life. Whatever was mysterious and inexplicable in the light of familiar notions was a source of immense dread to infant humanity. It was for this reason that in ancient society poisoning was regarded with utmost social indignation. As Oppenheimer says, 'primitive toxicology was a branch of magic.'

Similarly the mysterious character of sex is at the root of its association with magic and religion. Among the ancients incest was believed to interfere with success in hunting and warfare. The magical uncleanness of sex was at the bottom of the purificatory rites prescribed for women after menstruation in Judaism, Hinduism and other ancient religions. Wherever it was believed that sexual excesses were magically fatal to social welfare, they won recognition as public wrongs that society should react against.

With the growth of finer feelings, religion came to occupy the place of magic and every social group be it a family or clan or tribe adopted the worship of titular deities peculiar to itself. Any act or omission considered as displeasing to the guardian deity was the subject of social reaction because it was believed that he who

stirred up the wrath of the gods drew it down upon the whole community. Hence sacrilege was one of the most heinous offences of primitive times.

Religion induced a belief that it was the duty of its adherents to see an act deemed displeasing to their God penalised as a social injury. This tended to expand the range of criminality in ancient society. The Herbrews regarded the violation of any of the Ten Commandments a serious injury to social welfare. In India too, the fiery spirit against the adherents of alien creeds breathes through verses like the one in the Upanishad of Bhasma Japalam to the effect that villages in which there is no temple of Siva should be burnt down; and every book not revering God Siva should meet the same fate. Acts considered private wrongs first assumed the status of public offences under the influence of religion. Hence Oppenheimer says, 'It was under the ægis of religion that the criminal code was born. In a subordinate way other factors may have helped its seeds to sprout; it remains nevertheless true that it is religious thought, religious fears and feelings which public punishment had to be fathered upon.'

By the development of the faculty of speech exchange of thoughts was best facilitated, and with the increase of social intercourse in consequence, a community of opinion was arrived at

in respect of acts and omissions best calculated to preserve and foster the harmony of various social relations. This paved the way for the establishment of public opinion as a social means of control.

Religious and moral ideas together with social customs were effective means of general control in tribal communities prior to the development of kingship and the evolution of the State. The laws of religion derived their strength from the idea of God as the ruler of the world. With the rise of monarchy, the king was regarded as the vicegerent of God on earth. Manu declared : ' A king, even though a child must not be treated lightly from an idea that he is a mere mortal ; no, he is a powerful divinity who appears in a human shape.' E. Westermarch is of opinion that kingship and godhead have had the same origin in the minds of men. In monarchies, the king either on behalf of society or in his own interests penalised acts which he deemed anti-social, so that the list of crimes expanded with the growth of despotism.

Likewise, where religion was a ruling influence, the priestly class attained the highest importance in society as the media of communication between the people and the gods. In Roman history, the patricians derived their importance mainly from religion. In this country, the domination of the priesthood made criminal

law purely a body of class legislation. No doubt the king was surrounded with a halo of divine glory but royal greatness was clearly eclipsed by the spiritual assumptions of the priestly class. The legend of the war between the Kshatriyas and the Brahmans in Puranic times of old points to the imperious powers arrogated to themselves by the priesthood. Just like the king, the priestly class in their own interests forged additional fetters to the liberty of the individual, but claimed the utmost freedom for themselves. This is clear from the following verses in the Institutes of Manu : ' Never shall the king slay a Brahman, though convicted of all horrible crimes, let him banish the offender from his realm, but with all his property secure and his body unhurt.'

Similarly, every ruling class stigmatised as criminal acts which were prejudicial to its interests ; and the list of crimes varied in content with the nature of the party in power in the Government of any social group.

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PART II—WRITTEN LAW.

It was only after the development of political government that writing came into use and penal codes were framed in nearly all the civilised states of antiquity. The Babylonians had a written code called the laws of Hammurabbi ; the oldest extant Hindu Code is the Institutes of

Manu. The Roman law of the Twelve Tables is dated 450 B. C. In Asia, the Chinese had a code called the Ta Tsing Leu, Lee the corresponding code of the Japanese being the Taipo Ritsu. The Muhammadan criminal law was embodied in the Koran; and the earliest Germanic code extant is the Lex Salica. At the present day the criminal law of western society is traceable to Roman and English legal systems. For our purposes we may also have a peep at the Laws of Manu. We shall now see how the penal law embodied in these systems reflects the social conditions of those times and has changed with them. In doing so we shall first pursue the history of the offences treated above.

The hunting rules of the primitive society probably developed into the game laws of modern times. Acts injuriously affecting the economic relations of a people were, after the development of the State, treated as offences, only if they involved serious danger to the public in the shape of mischief or fraud. Raising the price of corn in the market by a public servant was a public wrong in Roman law punished according to the provisions of Lex Julia de Annona. It was punishable only as an 'extraordinary crime' when committed by a private man. The term 'crime' in this phrase means accusation. When any offence was triable by a procedure peculiar to it and not found in the civil law it was called 'extraordinary.' It

stood midway between private wrongs and recognised public offences. Of the various provinces of the Roman Empire there were offences special to each. In Egypt, the breach of the banks or dykes of the Nile was an 'extraordinary crime' punishable with burning alive or death. The sumptuary laws of mediæval times were a kind of class legislation, not advantageous to society, save where luxury was forbidden to the poor. Owing to the limitless diversity of economic activity in modern society, the rules that regulate economic relations are part of the law of contracts and their violations have in most cases lost the status of offences.

One of the gravest of ancient offences was Treason, although in primitive society it had only a limited scope. The law of treason varied with the political organisation of the society and the character of the environment. In a village group treason consisted in incurring the direct hatred of the people by betraying their interests. 'He who earns the enmity of the village will be destroyed root and branch' is the rendering of a Tamil proverb. Provisions against refusal to fight the enemy remind us of a law of Solon that none should be neutral, but must be a member of some political party. Even to-day where conscription is compulsory this is an offence but not so grave as in times of yore. In republics like Athens, the punishment of treason was limited to social

necessity owing to the great respect for individual rights. Thus Ostracism in Greece entailed exile only for a time. Even at Rome, treason was in the days of the republic mostly punished with exile but in the Empire, death became the chief penalty, for with the growth of the Imperial Power the law of treason attained vast proportions. It penalised not only acts endangering the existence of the State, but also acts against the monarch or the head of the State. Treasonable offences in Roman Law fell into two classes: the first comprised offences like waging war, incitement to mutiny and disloyalty of the provincial governors manifested by refusal to give up their provinces and the like; and the second included every kind of disrespect to the Emperor and every kind of resistance to authority. The first was known as Majestas, while the second was called 'læsa majestas.' The severity of the law varied with the temper of the rulers in despotic governments.

In early English Law, the treasonable offences were (1) plotting against the king's life, (2) plotting against a lord, (3) fighting in the church or king's house, (4) the breach of the king's peace. Resistance to authority was also included. The first offence corresponds to perduellio of Roman law. The feudal idea of tenure made the second offence also treasonable. The third offence corresponds to 'læsa majestas' as showing disrespect to the heavenly or earthly

ruler. After the Norman conquest the doctrine of the King's Peace served to extend the scope of crime and transfer private wrongs to the category of public offences. The conception of treason is given in a passage of the Mirror as follows: 'The crime of majestas is an horrible offence done against the king, and that is either against the King of Heaven or an earthly ruler.' The scope of the offence expanded with the personal importance of the sovereign. For instance, the Mirror includes among treasonable offenders, 'those adulterers who ravished the king's wife, the king's unmarried daughter (being in his custody) or the nurse or the aunt heir to the king.' Perjury was also held treasonable because it was lying against the king, and 'into perjury fell all the subjects of the king who appropriated to themselves jurisdictions over the kings and of themselves made Judges, Sheriffs, Coroners and other officers to have the command of law.'

The first statutory provision in respect of treason was enacted in 1352 in the reign of Edward III. This declared the following treasonable: (1) showing an intention by an overt act to kill the king, (2) waging war against the king and (3) adhering to the king's enemies. The first offence did not directly threaten the existence of the State; the second was mostly an offence committed by rival claimants to the throne and the last really struck at the root of

social existence. Because Edward III was a popular king,the law of treason was very limited in its scope. For instance, no'provision was made in respect of an act of violence against the person of the king, which did not show an intention to kill him. But in course of time, by a wide construction of the Statute, all attempts upon the person of the sovereign or his authority were treated as treasonable. In Henry V's time, 'it was treason to rob, kill or spoil persons having the king's safe conduct.' In the days of Henry VII, the law of treason expanded vastly owing to the necessity of strengthening the State against the Church and fortifying the king against his rival claimants. It was treason 'to wish, or will or desire by words or writing, to imagine or invent any bodily harm to the king or to deprive him of dignity or liberty.' The curious point in this law is that not only an act but the mere intention to do it was penalised. In the reign of Henry VIII, failure to take the oath of abjuration of papal authority was an act of treason. Those who went beyond the sea to avoid the penalties enacted by the royal proclamation were held guilty of treason. Monarchical power grew so strong that royal proclamations had the validity of Acts of Parliament. Then in the last century, many of the constructions upon the statute of Treason were legalised by Statute 35 Geo. III Ch. I, and 11 and 12 Victoria Ch. 7, which respectively declared it high treason (1) to do harm to the

person and liberty of the sovereign and (2) felony, to conspire or attempt or abet the waging of war against him. The provisions of the latter statute were adopted as Section 121A of the Indian Penal Code through the influence of Sir James Stephen. The present English Law of treason is substantially described free of technicalities in Section 75 of the Draft Code prepared by the Criminal Code Commission in the year 1878 and 1879.

While the English Law of treason mainly treats of offences against the sovereign, the French and German Codes preserve a distinction between the offences against the Sovereign and offences against the State. In France, the latter 'bear the traces of history in which war has been far more frequent than in England'; but in the German Code the former are considered more serious. For instance, a Frenchman bearing arms against France or intriguing with a foreign power to go to war with France is guilty of a capital offence according to the Code Penal; but, the maximum punishment for a German who bears arms against the German Empire or its allies is only penal internment or military detention for life, and if the German has been in the service of the enemy and continues there after the outbreak of war, the penalty for him is only penal internment from 2 to 10 years, and extenuating circumstances may reduce the punishment to military detention.

Now we shall attend to the development of the law of Treason in this country. In ancient India, written codes of law emanating from the lawgivers of the priestly class did not formulate the law of treason in any elaborate manner. However in a despotic Government, a private citizen would court perdition, should he raise his little finger against the monarch or any other member of his family. In Manu, we find the verses, 'He who shows hatred of the king, through delusion of mind, will certainly perish, for speedily will the king apply his heart to that man's perdition.' 'The fire of a king in wrath burns a whole family with all their cattle and goods.' These expressions apply equally well to wrongs against Muhammadan rulers.

Coming to recent times, the original framers of the Indian Code limited the offence of treason to the waging of war, or attempt or abetment thereof 'against the Government of any part of the territories of the East India Company.' They instanced as acts of treason (1) joining the army of a foreign power, (2) conspiring to cause an insurrection against the Company's Government and (3) instigating a Native power to make war on the Government of India. After the transfer of the Company's possessions to the British Crown, the term 'Queen' was substituted in place of 'East India Company.' With reference to the meaning of 'the waging of war,' the Indian Law Commissioners concurring in the opinion of the

English Criminal Law Commission have indicated that the terms were not intended to be used otherwise than according to their literal sense. Thus, the law of treason as laid down in Section 121 Indian Penal Code is confined to its reasonable limits by reason of the peculiar circumstances of British Administration in this country. The Indian Penal Code nowhere provides against any attempt on the life or the person of the Emperor, for although they proposed that the Imperial legislature should pass a law of High Treason, the Indian Law Commissioners at that day thought it improbable that 'any English King would visit his Indian dominions, or that any plot having for its object the death of the English King would even extend its ramifications to India.'

Treason may consist either in acts or words. Sometimes words oral or written are more dangerous than even acts. Words causing disaffection against the State are said to be seditious. The Latin term 'seditio' signifies an actual riot, rather than words displaying a seditious intention. In course of time, both words and acts against the sovereign were treated as seditious. As in a republic it is quite natural that insulting a citizen would be insulting the Government of which he forms a part, libel and insulting songs were by the law of the Twelve Tables declared to be punishable with death. In the days of the Empire, words said against the Empror, whether they

were true or not, constituted the offence of 'læsa majestas.' On the contrary, it is laid down in the laws of Manu that if the defeated party in suits and complaints abused him, the king should brook such insults with grace and patience. Tiruvalluvar the great Tamil poet says, 'He who brooks the taunting jeers of the people will conquer the wide world.' But libels of this kind are not political in character. In English Law, sedition was a breach of the king's peace and was regarded as treasonable in the time of Henry VIII. The modern definition of sedition is given by Stephen in his Digest, and the provisions of Section 124A of the Indian Penal Code were added in 1870 only on his motion when he was Legal Member of Council in India. According to him, sedition is the 'intention to excite disaffection against the person of His Majesty; to excite subjects to attempt to obtain otherwise than by lawful means the alteration of any matter in Church or State as by law established, to raise discontent or disaffection among His Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of his subjects.' In the Indian Penal Code, the offence does not include the intention to excite disaffection against the person of His Majesty; while the promotion of ill-feelings between different classes of subjects is provided against as a distinct offence in Section 153A in the chapter on offences against public tranquility. These two modifications are respectively due to

the fact that in India it is most unlikely that the first offence would be attempted, especially as there is no reason for Indian subjects to feel dissatisfied directly with His Majesty and that the second offence relates rather to social or religious interests than to any political concern of serious importance.

Now let us pass on to the consideration of offences relating to magic and religion. According to the law of the Twelve Tables, 'whoever injured crops by enchantment or conjured them from one field to another was guilty of a serious offence. In India, witch-craft is said to be penalised as an offence in one form or another in some of the Native States. In England it was an offence in Anglo-Saxon times and also in the 17th century when the conjuring up of devils was made a felony without benefit of clergy. With the dawn of the age of Science, men lost their faith in sorcery which in consequence lost its status as a crime. Lord Hale, the author of the Pleas of the Crown, stated that there was no felony where no external act of violence was offered, and that 'secret things belonged to God.'

Apart from magic, the influence of religion in the shaping of penal law cannot be underrated. In Roman Law although theft was a very light offence, stealing something sacred was punished with death, sometimes by burning and

often by the offender being thrown to the beasts. The introduction of alien religions was an 'extraordinary crime,' in the Roman Empire, which bore very hard on Christian Missionaries of that day. In the war of the Church with the State in mediæval and modern times, new crimes were forged which subjected men to cruel tortures. Even to-day, countries most advanced in civilisation in the West like the United States of America have not escaped the restrictions of sabbatarian legislation, and laws against blasphemy and profanity. In spite of the fact that in ancient India toleration was a ruling principle, contempt for alien creeds tended to create a wide cleavage among the votaries of various conflicting faiths in the society. The formulation of law by the priestly class had much to do with the restrictions of freedom of thought, speech and action and the hampering of social progress. However, the authors of the Indian Penal Code revived the policy of Toleration as conducive to social peace and order. With reference to offences relating to religion, Sir James Stephen says: "They present an extraordinary contrast to the English law on the subject as it stood in early times, but they reflect precisely the tone of modern English sentiment. They appear to me to carry the principle of tolerating and protecting all religions whatever to a length which cannot be justified and which might lead to horrible cruelty and persecution, if the Government of the country

ever got into Hindu or Muhammadan hands." This remark would hold good, were it not taken into account in estimating penal responsibility that the alleged offender should be proved to have had a deliberate intention of wounding the religious feelings of any person or of insulting his religion, and Stephen appears to hold that there can be a reasonable presumption of such a deliberate intention even in respect of words uttered in the heat of discussion or remarks made by way of argument. But this is a position which does not appeal to us. However, it may be suggested that for the sake of clearness an exception may be made in favour of *bona fide* and peaceful attempts at proselytism by appeal to the intellect. Another worthy measure that is desirable is a clear demarcation of the rights and privileges of the various Hindu creeds in order to put an end to or minimise the chances of tumultuous conflicts between one another.

We have seen that in ancient society religion inspired the regulation of sexual relationships. In Roman Law, adultery, incest, polygamy, unnatural offences and pimping were punished as 'Pulica Judicia' by Lex Julia de adulterio. For adultery in the act, death might be inflicted by the father of the woman accomplice; but both the accomplices should be killed; otherwise the father would be guilty of homicide. This is traceable to the absolute powers of the pater-familias in the patriarchal family of ante-tribal

days. Adultery was almost the only ground for the mitigation of punishment for homicide in Roman Law. It became an ecclesiastical offence in Christian times. In Anglo-Saxon Law a woman forfeited her nose and ears for adultery, but in modern English Law it is more or less a civil injury. The history of adultery in its passage from being a criminal to civil wrong illustrates the truth that at first religious, moral and legal ideas were mingled together, and that there was little distinction between criminal and civil law. After the penal law was differentiated from the civil one the distinction between religious and secular rules of conduct was observed and only later on, the distinction between ethics and law came in and has not yet become complete. As Lord Macaulay hinted, 'a penal code is not a body of ethical rules.' 'Many things which are not punishable are morally worse than many things which are punishable. The rich man who refuses a mouthful of rice to save a fellow-creature from death may be a far worse man than the starving wretch who snatches and devours the rice; yet we punish the latter as a thief, while we do not punish the former for hard-heartedness.'

The Laws of Manu originated at a time when the line between secular, religious and moral rules was hazy and blurred. Elaborate expiations are therefore prescribed for sexual offences. Owing to the fact that every community preserved its

identity by rules of exogamy, adultery and other sexual delinquencies were regarded as disruptive of communal purity and unity. 'Since adultery causes to the general ruin, a mixture of classes among men, thence arise violations of duties (*i.e.* of caste functions) and thence is the root of felicity destroyed.' For a similar reason, intercourse with the wives of public dancers and singers who led a dissolute and free life and with the wives of those who connived at it was not regarded as a serious offence, being punishable only with a small fine. Rape was punished with corporal punishment. This reminds us of corresponding provisions for whipping under the present law (vide Whipping Act 1909 Section 4). Insolent contamination of a damsel was punished with mutilation and fine, but the punishment for defiling a consenting woman was only fine. As regards adultery, the poor woman accomplice was victimised more mercilessly than the male offender. By the law of Manu 'should a wife violate the duty which she owes to her lord, let the king condemn the woman to be devoured by dogs in a public place.' Nemesis has in a way turned the wheel upside down, in view of the provisions of Section 497, Indian Penal Code, which says that the wife shall not be punishable as an abettor. The reasons for the framing of this provision are assigned by the original framers of the Code as follows: 'The condition of women here is different from that of the women of

England and France; they are married while still children; they are often neglected for other wives while still young, and they share the attention of a husband with several wives. To make laws for punishing the inconstancy of a wife while the law admits the privilege of the husband to fill his zenana with women is a course which we are most reluctant to adopt.' They did not deem it useful to make adultery an offence. Their opinion was this: 'Those whose feelings of honour are painfully affected by the infidelity of their wives will not apply to the tribunal at all; and those whose feelings are less delicate will be satisfied by a payment of money.' On the other hand, Colonel Sleeman and others who desired to penalise adultery attributed the failure of the aggrieved to go to court to the difficulty of obtaining a conviction, and were of opinion that adultery led to serious social injury, because the husband would poison his wife while the seducer escaped with impunity. Here too their suggestion proved favourable to the wife so far as the Penal Code was concerned.

The Indian Criminal Procedure Code has restricted the right of prosecution only to the injured and made the offence compoundable as well. No doubt, adultery is an offence in several of the European Codes, (for instance, under Section 172 of the German Criminal Code,) but only on condition that marriage has been dissolved

on account of it. Besides, the offence is a non-cognisable one and the punishment is far lighter than here, being confinement not exceeding six months. Similar is the punishment for adultery in the Code Penal (Napolean) and the Code of Louisiana which was one of the statutes consulted by the framers of the Indian Penal Code.

While adultery is an offence against the husband, it is bigamy that is the main offence against the institution of marriage. In Roman Law polygamy was a crime, but in ancient India, it was morally permitted only in case of necessity as when the first wife was barren or the first husband was impotent or absent for a long time from home. In modern European Law, it is an offence mainly against the sacredness and sanctity of the marriage tie; because as pointed out by the framers of the Indian Penal Code it is why little distinction is maintained between bigamy which is productive of the greatest suffering and that which is productive of the least. With this in mind Lord Macaulay had no idea of making it an offence in the absence of fraud or mischief. But on the ground that the absence of the section on Bigamy was likely to tolerate Polygamy for the English in India, and for Christians, the Indian Law Commissioners included the present provisions in the Code. The only thing that calls for remark is that a Hindu woman is not punished for adultery, but for bigamy. In bigamy, we

see the last trace of the influence of religion on social or sexual relationships.

Now we see how several of the crimes of primitive society lost their gravity with social advance. In course of time a selection has taken place whereby penal law is mostly confined to social injuries.

With political advance the list of crimes became considerably swollen by the expansion of the category of offences against the public as well as by the inclusion of what were once regarded as private wrongs. With reference to public wrongs we have seen that it was offences against the State or the Sovereign that first claimed the attention of every community. Other wrongs against the public won a place in Criminal law only in process of time. Some wrongs which directly affected private interests were styled public because of the terrible alarm they caused to society, whereas certain acts *now* deemed dangerous to public order were then viewed in the nature of private delinquencies. Thus in Roman law while rape and perjury were declared public crimes, it was an offence of a private character to take the law into one's own hands, which is at the present day an offence against public tranquility. In some systems there was a distinction made between offences punishable with fines and those punishable with imprisonment or other personal suffering. The law relating to the former was

called Penal Law, and that in respect of the latter, the law of Crimes. This distinction is traceable in the laws of Manu where the king is exhorted to punish the unjust by employing three methods, *viz.* by 'imprisonment, by confinement in fetters and by various kinds of corporal punishments.' Here fine is not included as a kind of penalty, although elaborate provisions are laid down in respect of fines to be levied for a variety of other wrongs.

Next in seriousness to treasonable crimes, offences by and relating to public servants, offences against justice, offences against public tranquility and offences against revenue and coinage, comprise the division of public wrongs. Now we shall briefly consider the place of these in the three systems.

In Roman Law abuses of public offices, and acts prejudicial to the public at large were part of publica judicia. Receiving bribes to sentence a citizen to death was a capital offence. Raising the price of corn and peculation of public money were punished by special laws. Abuse of public offices was treasonable in English Common Law as already stated. The necessity of social defence against the crimes of public servants is insisted on in Manu in the verses. 'Since the servants of the king whom he has appointed guardians of districts are generally knaves, who seize what belong to other men, from such knaves let

him defend his people.' 'Of such evil-minded servants as wring wealth from subjects attending them on business, let the king confiscate all the possessions, and banish them from his realm.'

Offences against public servants appear to have been very few in Roman Law. Resistance to authority was the main offence. In English Law public servants are not favoured with special privileges as on the continent, but treated more or less on a footing of equality with other citizens. In this country, a public servant is protected far and above a private citizen; he should not be resisted even though his act is not strictly justifiable at law. If the public servant is a victim of homicide, even loss of self-control on provocation is no ground for mitigation of punishment. Besides, there are numerous provisions for the protection of public servants in the discharge of public duties. Sir James Stephen says: 'Offences relating to public servants form a very important part of the Indian Penal Code as the official body in India occupies a position and is charged with fuctions of far greater importance than belonging to any corresponding body of officials in the world. possibly with the exception of Russia.'

Of offences against justice, that of giving false evidence was punished in ancient societies with the greatest severity, owing to the extreme importance and difficulty of getting at the truth in those days when the law of evidence

and the methods of examination were little developed in any scientific manner. It is laid down in the Twelve Tables, that whoever gives false evidence must be thrown down from the Tarpeian rock. In the institutes of Manu, perjury is threatened with elaborate and horrible spiritual sanctions. 'Naked and shorn, tormented with hunger and thirst and deprived of sight, shall the man who gives false evidence go with a potsherd to beg food at the door of his enemy.' At the present day perjury is punished at least in one respect more severely here than in England. The giving or fabrication of false evidence is a capital offence if it has led to the conviction and execution of an innocent person. Even otherwise it is punishable with transportation for life if the offence at the trial of which perjury is committed be a capital offence by the Law of England as well as by the Law of British India.

Of offences against public tranquility the only kind of offence that was considered serious in the days of the Twelve Tables was 'making disturbance at night in the city', for which the penalty was death. But in the days of the Empire, the offence due to quarrels between private individuals was chiefly punished as a private wrong. In England, offences against public tranquility were originally treasonable as breaches of the King's Peace. These derive their

importance from the fact that collective criminality is more dangerous than individual delinquency. It is only for this reason that they were regarded as serious wrongs earlier than individual acts of violence.

Smuggling and refusal to pay taxes are instances of offences against revenue. Although the original draft of the Indian Penal Code laid down penal provisions in respect of these offences, the Indian Law Commissioners viewed them as in the nature of civil injuries that arise in the course of mercantile transactions and not as crimes against the authority of the Sovereign. They were of opinion that the punishment prescribed for smuggling in the original draft was severer than that prescribed in the pre-existing regulations. Hence, they struck out the provisions in respect of them. Offences against revenue now come under special laws.

Offences relating to coinage though regarded objectively as against the honour and prerogative of the sovereign are committed by the offenders only with an economic motive. In the Roman system, counterfeiting money belonged to the category of 'Crimen falsi' and was punished by Lex Cornelia Nummaria. In English Law, coining was treason, felony, or misdemeanour, according to the varied statutory provisions in respect thereof. Owing in part to the serious consequence of these offences to economic life, and in

part to the persistence of the idea that they are violations of the royal prerogative, penalties against them are extremely severe under the Indian Penal Code.

Now, we shall pass on to the consideration of private offences which won the status of public crimes, because they were considered breaches of the public peace.

Of the private wrongs which became offences, space does not permit us to do anything more than outline the history of murder and theft. Where violence was deprecated more than dishonesty, homicide became a serious offence earlier than theft. But where if violence was regarded as a sign of strength and if people had a great respect for truth, theft was more heinous than murder. Roman Society came under the softening influence of civilization and recognised murder as a public offence very early in its history; while theft, expect when it was sacrilegious, was only 'an extraordinary crime' even in its aggravated forms. Stealing was ordinarily a private wrong under the Roman Law. But the reverse has been the case in England. The English people were noted for their blunt straight-forwardness and honesty, and were at the same time a vigorous and violent race from the North. Hence, in Anglo-Saxon Law, murder was atoned for by the payment of 'bot,' 'wer' and 'wite'; while theft was the 'crime of crimes' and invariably punished with

death. It was only about the time of Alfred the Great that death was prescribed as the penalty for wilful homicide. Homicide by a negligent act entailed the payment of a fine only. The Indian Society of Manu's days resembled the Roman rather than the British. 'Let not the king endure for a moment the man who has committed atrocious violence as by robbery, arson and homicide.' 'He who committed great violence must be considered a more grievous offender than a defamer, a thief, or a striker with a staff.'

In the law of the Twelve Tables, wilful homicide of a free man was punished with death, and a prisoner was deemed a parricide. In later Roman Law, Lex Cornelia de Siccarais et Veneficiis penalised homicide as a public offence. If a person's act resulted in the death of any other, he was held guilty without any inquiry being made whether there was any causal connection between the death of the victim and the act of the accused. It appears that even at that day a distinction was maintained between an intentional and a negligent act. Homicide by negligence was not within Lex Cornelia but one to be tried by an extraordinary procedure. According to Hadrian, the intention as displayed by the circumstances decided the responsibility for guilt. Owing to the fact that the Roman held most sacred the associations of the family, parricide was viewed as an act of treason in the little kingdom

of the family, and was therefore the subject of a special statute called Lex Pompeia de parricidis and was punished by burning, the original penalty having been sewing up the offender in a sack and throwing him into the river. The letter of the law was strictly relied on, so that the killing of an unborn child was 'an extraordinary crime', since it was not a human being.

The right of private defence lawfully exercised was a good plea against the charge of homicide in Roman Law. The law of self defence against injury to the person has also been recognised in the Institutes of Manu. 'The twice-born may take up arms when their duty is obstructed by force, and when in some evil time a disaster has befallen them and in their own defence in war for a just cause; and in defence of a woman or priest, he who kills justly commits no crime.' 'Let a man kill another if he cannot otherwise escape. By killing an assassin who attempts to kill whether in public or in private, no crime is committed by the slayer; fury recoils upon fury.' In the laws of Manu, murder is generally penalised by elaborate expiations. While compensation was the peculiar feature of Anglo-Saxon law, expiation was its counterpart among the Hindus. According to Manu, the gravest of crimes was the slaying of a Brahman. Killing a friend without malice was also a crime in the highest degree. Killing without malice, a

sudra, a vaisya, a kshatriya (probably by a Brahman) were crimes in the third degree, but higher or lower according to circumstances. Murder involved a loss of caste in the first place. For killing a Brahman with malice prepense, the term of penance was doubled and if the case was atrocious, the murderer must die in flames or in battle. If a Brahman was an assassin, he 'must himself make a hut in a forest and dwell in it twelve years, subsisting on alms for the purification of his soul, and placing near him, as a token of his crime, the skull of the slain, or any other human skull that he can procure.' The time of penance for the three lower classes must be twenty-four, thirty-six and forty-eight years respectively. The penance was the same as for murder if an embryo was crushed, the sex of which was unknown but whose parents were sacerdotal. Negligent killing of a priest was expiated by walking on a pilgrimage a hundred 'yojanas' and practising abstinence. 'If a Brahman kills by design a cat, or a frog, or a dog, an owl, a crow, and the like, he must perform the ordinary penance required for the death of a sudra, *viz.* the *chandrayana*.' This expiation was resorted to, in order to atone for acts which caused the defilement of the offender.

In the days of Mogul rulers, the Muhammadan laws of homicide prevailed in this country. The refinements of this law depended on the

gravity of the offence displayed by the circumstances of each case. Wilful homicide by a deadly weapon corresponded to murder. Other grades of homicide were (1) killing without a deadly weapon, (2) killing under a mistake as to person or circumstances, (3) homicide by means of an involuntary act and (4) accidental homicide. What was a deadly weapon was the subject of great discussion. It was doubted seriously whether the rope used to hang a man with was a deadly weapon. In the Indian Penal Code, the doubt has been cleared up by laying down that 'anything which used as a weapon of offence is likely to cause death is a deadly weapon.' According to the decision in Parma Singh V. R. XII Vol. Cr. L. J. page 103, 'a lathi is not a deadly weapon, unless and until it is used on some vital part of a person.' The law of homicide as laid down in the Indian Penal Code has little reference to weapons, and liability depends more upon a voluntary state of mind than upon objective circumstances. Homicide by a rash or negligent act was made an offence only on the motion of Sir James Stephen while he was here Legal Member of Council. The difference between English law and Indian law on the subject of homicide points to the superiority of the latter in that the former pays greater attention to the nature of the act than to the intention of the offender.

For other offences against persons like hurt and grievous hurt, the law of the Twelve Tables as a rule prescribed fine and retaliation respectively. In the Institutes of Manu, the law of assault and battery is detailed at length and the punishment is a system of fines graduated according to social rank. In cases of serious injury, retaliation was the rule. 'If a blow attended with much pain be given either to human creatures or cattle, the king shall inflict on the striker a punishment as heavy as the presumed suffering.' The law of libel and slander was only imperfectly developed in the Roman legal system; in the institutes of Manu, the law of defamation is purely inspired by priestcraft. 'A soldier defaming a person shall be fined a hundred panas; a merchant thus offending, a hundred and fifty or two hundred; but, for such an offence a mechanic or servile man shall be whipped.' While defamation in Indian law is an offence against reputation, in English law, it is an offence causing a breach of the peace. The framing of the provisions relating to it in the Indian Penal Code is commended by Stephen as lucid, detailed and characteristic of Lord Macaulay.

Now we shall turn to a brief consideration of the offence of theft. In most of the ancient penal systems, the objective principle of social gravity was considered in preference to the subjective side of the act. That was the reason

why while theft of even the smallest thing imaginable is an offence in modern law, the offensive character of stealing depended in ancient systems on the value of articles stolen or on aggravating circumstances. In Roman law, for instance, theft as a crime could not be committed on less than four pigs or ten sheep. Theft in aggravated forms fell into the category of 'extraordinary crimes'. Theft of clothes from public baths, stealing armed by night and housebreaking were punished with flogging and labour in mines. The Anglo-Saxon law of theft was a contrast to the Roman one. In the former, theft was a capital offence. In theft, there should be an unlawful taking according to English law, so that innocently getting possession of an article which belonged to another person was not affected by subsequent misappropriation. That explains the fact of history that for a long time criminal breach of trust was not an offence in English law. Even now criminal misappropriation is not an offence at common law, save in so far as it has been made such by statute. The juristic notion of theft was different in the two systems. In Roman law, although wrongful taking was necessary for theft, misappropriation was a sufficient criterion in many cases. In another respect, the Roman idea was more or less similar to the conception of theft under the Indian Penal Code, for, whatever could be made moveable was capable of being stolen in both the systems. In English law,

whatever savoured of reality like a document of title to land, is not the subject of theft, although it may be moveable. While in Roman and Indian Law, theft is an offence against possession, the offence of larceny is one against ownership, general or special, in the English system.

Turning to the laws of Manu, we find theft varied in legal importance with the value of articles stolen and with the rank of the aggrieved party. 'The stealer of gold from a priest must be struck by the king with a pestle of stone or a javelin pointed at both ends or an iron mace.' Just as in Roman law selling a free man as a slave was a public offence, the stealing of men and women and precious gems like diamonds or rubies was a capital offence in Manu. Theft of more than fifty palams of grain was an offence punishable corporally, while pilfering things of less value was repressed with fine. "The taking of roots and fruits from a large tree, in a field or a forest unenclosed, or of wood for sacrificial fire, or of grass to be eaten by cows is, Manu has pronounced, no theft." The Indian idea of robbery is described in the following verse: 'If the taking be violent and in the sight of the owner, it is robbery; if privately in his absence it is only theft; and it is considered theft, when a man having received anything, refuses to give it back.' It is strikingly curious to note that while for offences against the person, a Sudra is dealt with

far more severely than a member of the twice-born classes, with reference to theft, the punishment of fine for a man of the lower caste is far lighter than that prescribed for other classes. 'The fine of a Sudra for theft shall be eightfold, that of a Vaisya sixteenfold, that of a Kshatriya two and thirtyfold, that of a Brahman four and sixtyfold, or a hundredfold complete or even twice four and sixtyfold; each of them knowing the nature of his offence.'

Criminal misappropriation was treated as theft. 'Such kinsmen, as by any pretence appropriate the fortune of women during their lives, a just king must punish with the severity due to thieves.' The law relating to theft of things lost was in Manu's days as follows: 'Property lost by one man, and found by another, let the king secure, by committing it to the care of trustworthy men, and those, whom he shall convict of stealing it, let him cause to be trampled on by an elephant.' It is a peculiar feature of Indian Smrithis, that the moral rather than the legal point of view was adopted for the elaboration of juristic principles. But for the evils of caste, the moral standpoint would have opened a wide field for individualisation, the seeds of which are visible in the verse. 'Let the king, having considered and ascertained the frequency of a similar offence, the place and the time, the ability of the criminal to pay or suffer, and the crime itself, cause punishment to fall on those alone who deserve it.'

—:o:—

APPENDIX

STATISTICS.

Since Criminology is a human science, its conclusions are largely based upon statistics. On a great number of topics, statistics have to be collected for the special study of the subject in relation to any country. European and American Statistics are fuller, more detailed and wider in scope than the Indian returns. In India, fresh columns have yet to be opened in the register of statistics for collecting information on a good many points essential to the science. Indian statistics of the day do not afford room for determining the influence of climate, seasons, meteorological conditions, urban and rural life, economic organisation, heredity, mental defect, pathological conditions, educational institutions and the like. In respect of marriage, religion, education, age, classification of criminals, the statistics are perfunctory from the standpoint of Criminal Science. With the development of the science, the statistical record of the country, will, it is hoped, attain the fulness and accuracy that are required for investigation.

Here will be given a few specimen of returns in different countries on crime and related topics.

The number of offences reported, show the extent of criminality in a rough fashion, since false accusations have to be excluded, and note must be taken of the fact that several offences go unreported.

BRITISH INDIAN CRIMINAL STATISTICS FOR THE YEAR 1917—18 *i.e.*, BEFORE THE WAR WAS OVER.

Offences reported	...	...	16,38,577
,, returned as true	...	...	13,16,089
,, brought to trial	...	...	12,08,242
Number of persons concerned	...	...	19,94,556
,, Convicted	...	...	983,744

Persons convicted under the Penal Code number 269,282 and the remaining were tried under special or local penal laws.

The population of British India in 1911 Census :—

Males	...	160,323.036
Females	...	152,932,876
		313,255,912

It must have risen higher in 1917.

On an average in	
1899 convicts rose up to	38 per ten thousand
1908—37	do.
1916—42	do.
1917—40	do.

Serious Offences 1917—1918.

Affecting life	...	5,756
Hurt	...	40,782
Criminal force	...	13,810
Theft	...	61,995
Robbery and dacoity	...	4,123
Criminal trespass	...	26,954
		153,420

Cases of Conviction for true cognisable crime in India :—

1915—423,683
1916—433,770
1917—413,545
1918—393,998
1919—449,523

Owing to the after-effects of the Great War, economic crimes increased largely in 1919.

In the province of Madras, the population is as follows :—

1901—38,653,558
1911—41,870,160
1921—42,794,155

For habituals
Vide the Indian Jails
Committee Report
Vol. I p. 92.

Total number of true cases in Madras :—

1915—172,402
1916—171,812
1917—159,289
1918—155,614
1919—174,141

Quinton's Crime and Criminals, England, p. 10.

Population.	Convicts.	Local Presses.
1880—25,708,666	1880—10,299	19,835
1909—35,318,780	1909—3,106	18,923

STATISTICS FOR SERIOUS CRIMES IN MADRAS.

	1916	1917	1918	1919	1920	1921
Murder ...	687	728	893	982	974	684
Dacoity ...	678	424	879	965	699	880
Robbery ...	974	890	1,052	1,144	956	968
House-breaking ...	11,096	11,698	13,146	15,783	12,669	11,591
Theft ...	18,489	19,737	23,095	26,297	23,019	21,103
Cattle Theft ...	3,936	3,483	3,891	5,583	4,464	3,775

AGE AND EDUCATION.

MADRAS PRISON STATISTICS.

Years.	Under 16 years.		16 to 40		40 to 60		60 & above.		Able to read and write.		Able to read only.	
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
1913	231	67	16,454	860	3,601	762	261	8	3,271	22	615	3
1914	206	26	17,068	845	3,357	202	203	10	3,203	11	576	2
1915	126	20	18,567	807	3,914	231	209	10	3,958	16	625	2
1916	75	19	17,677	848	3,514	230	265	5	3,460	11	970	3
1917	60	4	16,815	743	3,083	164	257	17	3,124	12	677	2
1918	87	20	19,003	779	3,756	205	334	17	3,194	20	780	4
1919	90	20	24,880	1,213	4,898	297	535	20	3,630	17	911	6

ALCOHOLIC HEREDITY.*

Sichart and Marro found the parents of criminals alcoholic in the following proportions:—

	Sichart.	Marro.
Thieves	14·3%	46·6%
Swindlers	13·3%	32·4%
Incendiaries	13·3%	42·8%
Perjurers	11·1%	...
Sexual Criminals ...	14·2%	45·3%

Comparing the proportion of vicious parents of the 3,000 criminals given by Sichart with those reported by Marro, we find them so divided.

	Vicious Parents.	
	Sichart.	Marro.
Thieves	20·9%	45·0%
Incendiaries	11·0%	14·2%
Swindlers	10·8%	32·4%
Sexual offenders ...	9·4%	28·2%
Perjurers	6·0%	...
Libellers	12·0%	...

* Per Lombroso.

Grave Crimes in the Madras Presidency for 10 Years.

Year.	Murder.	Dacoities and Robberies.	House-breaking.
1905	472	1,404	9,349
1906	572	1,235	9,199
1907	566	1,299	9,057
1908	575	1,002	10,229
1909	620	1,358	9,870
1910	605	1,347	9,956
1911	599	1,502	10,125
1912	647	1,557	11,064
1913	689	1,541	11,169
1914	704	1,473	11,111
1915	702	1,641	11,738

The number of murder has trebled itself in the course of 50 years.

GRAVE CRIMES FOR ALL INDIA.

CLIMATIC CONDITIONS.

GUERRY'S STATISTICS FOR FRANCE FOR THE YEARS 1826-1830.

	Crime against Person.	Crime against Property.
Northern France	2·7	4·9
Central France	2·8	2·34
Southern France	4·96	2·32

The following table indicates the seasonal distribution of certain crimes against property in Germany:—

SEASONAL DISTRIBUTION OF CRIMES AGAINST PROPERTY IN GERMANY.

Crimes.	Years.	Jan.	Feb.	Mar.	Apl.	May	Jun.	July	Aug.	Sep.	Oct.	Nov.	Dec.
Simple theft ...	1883–92	113	115	98	85	87	88	88	92	92	106	117	121
Aggravated theft.	1883–92	102	107	92	89	94	98	98	96	94	106	112	111
Receiving stolen goods ...	1883–92	123	122	103	82	82	83	80	81	81	100	120	142

With regard to crimes, spring and summer stand plainly in the first rank. Guerry gives the following figures for the occurrence of crimes against the person :—

	In England.	In France.
In winter	17·92%	15·93%
In spring	26·20%	26·00%
In summer	31·70%	37·31%
In autumn	24·38%	20·60%

HOT YEARS.

Ferri's Statistics for France.

Year.	Temperature	Cases of	
1830	89 Degrees F.	430	Homicide.
1832	95 ,,	520	
1848	89 ,,	435	
1850	91 ,,	560	
1848	89 ,,	380	Rape.
1852	95 ,,	640	
1871	90 ,,	550	
1874	100 ,,	850	

PRISON STATISTICS OF THE MADRAS PRESIDENCY.

Year.	Christians.						Muhammadans.		Hindus & Sikhs.		Buddhists.	
	Europeans.		Eurasians.		Natives.							
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
1913	9	1	16	4	568	45	2,069	45	17,885	1,002	...	
1914	10	...	21	2	697	37	2,034	42	18,133	1,002	...	
1915	9	...	14	1	613	34	2,397	52	19,783	981	..	
1916	8	...	20	1	564	36	1,985	39	18,951	1,026	..	
1917	3	...	12	1	513	40	1,929	30	17,758	857	...	
1918	13	...	10	1	628	39	1,840	20	20,689	956	...	
1919	16	...	20	2	786	39	2,615	51	26,971	1,458	1	...

Jail Population according to Religion in British India during 1917–18.

Members of Religion.	No. of prisoners	Percentage of the total No. in jails.	Percentage of free population.
Hindus & Sikhs.	95,965	57·74	67·89
Muhammadans.	48,827	29·38	23·49
Buddhists and Jains ...	14,759	8·88	4·55
Christians ...	1602		
(a) Europeans	157	·1	1·02
(b) Eurasians	159	·09	·96
(c) Indian Christians.	1,277	·77	3·54

PRISONERS FOR 1917-18.

	Men.		Women.		Total.	
	Absolute Numbers.	Percentage	Absolute Numbers.	Percentage.	Absolute Numbers.	Percentage.
Illiterate ...	4,321	22·5	3,264	32·5	7,585	25·9
Able to read, or read & write imperfectly...	3,804	19·8	1,983	19·8	5,787	19·8
Able to read & write well...	11,003	57·2	4,757	47·4	15,760	53·9
With a higher Education ...	93	0·5	32	0·3	125	0·4
Unknown ...	2	...	...	...	2	...
Total ...	19,223	100·0	10,036	100·0	29,259	100·0

MARRIAGE IN GERMANY IN 1888.

Age.	Number of Convicts to 100,000 persons to each Category.			
	Unmarried.	Married.	Wid. and Div.	Total.
18-21	2994·5	5413·0	...	3009·2
21-25	3107·0	3566·3	...	3163·8
25-30	2950·9	2504·7	4273·7	2746·7
30-40	2880·9	1961·2	3797·2	2171·5
40-50	2205·7	1487·8	2626·3	1599·8
50-60	1241·9	1009·8	1267·8	1052·5
Over 60	494·6	490·1	342·7	450·5

It appears, from this table, first, that in general the bachelors commit more crimes than the married men; second, that the contrary is true of the period between 18 and 25 which depends on local conditions.

FEMALES—MADRAS PRESIDENCY.

Year.	Married.	Unmarried.	Widows.	Prostitutes.
1913	761	112	191	33
1914	802	83	153	45
1915	801	167	177	23
1916	850	51	89	12
1917	717	36	154	20
1918	760	69	271	9
1919	1201	...	...	...

ECONOMIC CLASSIFICATION OF PERSONS CONVICTED OF CRIME IN ITALY.

The Economic Classes.	Percentage of Distribution.		
	1887	1888	1889
Indigent	56·34	57·45	56·00
Having only the bare necessities	29·99	30·77	32·15
Moderately well-to-do ...	11·54	9·98	10·13
Well-to-do or rich ...	2·13	1·80	1·72
	100·00	100·00	100·00

MADRAS STATISTICS.

Year.	Government Seers for the Rupee.			Grave Crimes.
	Rice.	Chola.	Ragi.	
1909	8·1	13·5	13 4	30,861
1910	9·0	14·0	15·0	30,335
1911	9·3	14·6	15·1	30,727
1912	7·5	12·6	13·5	34,408
1913	7·4	12·7	13·5	35,059
1914	7·7	13·5	13·8	34,665
1915	8·2	14·8	15·0	36,089
1916	7·8	14·5	14·8	35,660
1917	7 8	12·6	14·0	36,960
1918	6·9	9·9	12·0	42,956

MADRAS PRISON STATISTICS (OCCUPATION).

Year.	Illiterate.		Persons employed under Government & Municipal local.	Professional men.	Personal Services.	Agriculture.	Persons in commerce & trade.	Persons in arts & occupations.	Others.
	Male.	Female.							
1913	16,661	1,072	504	506	2,240	10,543	1,875	1,144	3,535
1914	17,125	1,070	396	507	2,773	10,779	1,550	1,344	3,555
1915	18,233	1,050	566	771	9,672	12,443	1,725	1,356	3,553
1916	17,100	1,088	496	8,081	3,546	11,764	1,545	1,429	1,942
1917	16,414	1,914	474	622	2,651	10,543	1,463	1,340	3,122
1918	19,203	1,992	458	651	2,544	11,621	13,751	1,534	4,997
1919	25,868	1,527	565	988	2,739	16,671	1,682	1,492	6,392

The following table indicates the percentage of Economic Crimes as compared with other kinds of crimes in several countries:—

	Economic Crimes.	Sexual Crimes.	Crimes of Vengeance.	Political Crimes.
Germany, 1896-1900 ...	41·80	1·32	56·67	0·12
England 1881-1900 ...	36·78	0·63	62·59	...
France 1881-1900 ...	60·09	1·59	38·32	...
Italy 1891-1895 ...	46·75	1·57	51·68	...
Netherlands 1897-1901	42·12	0·84	57·04	...

In crimes of vengeance are included such crimes as insults, malicious mischief, arson, assaults, homicide etc.

SALVATION ARMY STATISTICS

INDIA AND CEYLON.

	1907	1910	1914
Day schools ...	438	433	501
Children attending day schools ...	9,605	9,021	14,311
Industrial schools ...	14	16	22
Children attending Industrial schools ...	773	718	947
Social institutions ...	36	50	74
Inmates ...	327	1,664	8,610
Farm colonies ...	1	2	17
Settlers ...	250	326	7,250
Land in acres ...	500	580	40,217
Industrial homes for Europeans ...	...	...	3
Inmates ...	...	...	70
Settlements for released prisoners and vagrants...	1	1	6
Prisoners Inmates ...	25	25	510
Settlements for Criminal Tribes, Industrial and Agricultural ...	...	1	35
Inmates ...	...	250	8,009
Rescue Houses ...	1	4	5
Inmates in Rescue Houses.	100	100	120

A NEW CHART OF COLUMNS FOR STATISTICS

(Number Per Ten Thousand)

Names of Offences

Organic Conditions						
Insanes	Mental Defect	Subnormal	Control Defectives	Pathological	Intensity of Anti-Social Instinct	Abnormal Sexualism

HEREDITY

Criminal parentage	Vicious parentage	Alcoholism	Age of parents at time of birth	Diseases

COSMIC CONDITIONS

Seasons				Hot Years						
						Local Conditions.				
						Rural		Urban		
Spring	Summer	Autumn	Winter	Months of the year	Meteorological Changes	Mountainous	Marshy	City	Town	Criminal Centres

Names of Offences

AGE

7—12	12—16	16—21	21—25	25—30	30—40	40—60	Over 60

CIVIL STATUS

Unmarried		Married		Widows and Widowers	Prostitutes	Rank in Society		Illegitimates		Vagrancy	
Male	Female	Male	Female			Male	Female	Male	Female	Male	Female

CULTURE

Piety	Literary	Higher Education	Revolutionary	Sceptic	Criminal Tribes	Professional Crimes

ECONOMIC CONDITIONS

Acquired Wealth	Well-to-do	Ordinary	Indigent	Professions			Ascetics
				Dependents	Relatives	Independents	

Table showing the proportion of habituals in the jail population on 1st January, 1920.

Province.	Total jail population.	Of total Jail population, number classified.	
		As habitual offenders.	Under Ch. VIII of the Code of Criminal Procedure.
Assam ...	2,476	391	457
Bengal ...	15,026	4,316	3,337
Bihar and Orissa ...	9,188	2,365	1,021
Bombay ...	11,718	2,263	1,080
Burma	13,489	5,699	462
Central Provinces.	4,743	1,595	197
Delhi ...	464	184	15
Madras ...	11,354	3,853	886
North-West Frontier Province ...	2,515	123	38
Punjab ...	14,837	2,624	179
United Provinces ..	25,770	9,778	5,045
Total ...	111,580	33,191	2,717

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